

FAQ: Using a Creative Commons Copyright Licence for Learning Objects

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INTELLECTUAL PROPERTY

1. *What is copyright?*

Copyright is a form of intellectual property (IP) protected under a Canadian legal statute called the Copyright Act. Intellectual property is intended to give legal protections for products of the mind, similar to those protections available for physical property. Other categories of IP include patents, trademarks, and industrial designs. Copyright is a bundle of economic and moral rights related to the reproduction of creative works. The owner of a copyright is allowed to produce or reproduce the work in question or to permit anyone else to do so. Copyright law rewards and protects creative endeavor by giving the creator the exclusive right to use, copy and publish their work, among others. For more on copyright, please visit the [Canadian Copyright Office](#).

2. *Are learning objects covered by copyright law?*

Yes. While names, facts, and short combinations of words are not covered under copyright, learning objects - when taken as a whole - are largely protect under copyright law. However, it is important to note that, ideas can NOT be protected by copyright. It is only the expression of ideas that are protected by copyright law, provided the expression is fixed (in time and space) and sufficiently original.

3. *Am I always the copyright owner for my work?*

While the owner of a copyright is usually the person creating the work, this may not be true if the work is created while under the employment of another party. To find-out if you are the copyright owner of such works, please check your contract and review the issue with your employer.

4. *How long does my copyright last?*

Under Canadian law, your copyright will last for 50 years following the calendar year of your death.

5. *What are moral rights?*

In Canada, the author of a creative work is also granted “moral rights” in the work, at the time of creation. These rights are retained by the creator for the duration of the copyright even if the copyright is transferred to another person. Moral rights protect against the unauthorized use of the work in a way that materially distracts from its integrity and/or is prejudicial to the creator's honour or reputation.

6. *What is fair dealing?*

There are occasions when unauthorized use of a copyrighted work may not amount to

infringement of the copyright. These uses are described as “fair dealing” and include partial reproduction for private study, research, criticism, review, and news reporting. Nevertheless, if a passage is republished, it must be properly attributed to the author.

7. What is a derivative work?

A derivative work is a work that is based on another work but is not an exact, verbatim copy. What this means exactly and comprehensively is the subject of many law journal articles and much debate and pontification. In general, a translation from one language to another or a film version of a book are examples of derivative works.

IDENTIFYING EDUCATIONAL MATERIALS

1. What is the purpose of creating a commons of learning objects?

The idea is to make learning objects available under a copyright licence which gives permission to use, reuse and repurpose the work as needed in the context of education. The aim of the CC BY-NC-SA copyright licence is to increase the availability of Canadian content-rich learning objects and corresponding ICT skills, meeting criteria of accessibility flexibility and providing clarity about intellectual property.

2. Where can I find CC BY-NC-SA-licensed learning objects?

Learning objects available under an CC BY-NC-SA copyright licence can be found online at www.creativecommons.ca.

3. How do I use a CC BY-NC-SA-licensed learning objects?

The learning objects licensed under CC BY-NC-SA are available to use, reuse and repurpose free of charge. However, you need to understand what the licensing conditions for your selected object are. To do so, you simply click on the CC logo located at the bottom right of the page.

4. How do I use an CC BY-NC-SA-licensed work?

When using an CC BY-NC-SA-licensed learning object, you are pre-authorized by the licensor to use the work for non-commercial educational purposes. However, before using a CC BY-NC-SA-licensed work, you should satisfy yourself that the scope of the licence covers your intended uses. To get an understanding of the key terms of the licence, review the Commons Deed and visit the CC Canada website to learn more.

5. Can I get a certificate or diploma from CC Canada?

No. CC Canada does not grant diplomas or certificates. The learning objects are available for use, reuse and repurpose but CC does not intend to replace educational institutions. CC Canada merely serves to facilitate access to learning objects.

6. What if I have a concern or want to ask a question related to the learning object I am using?

Questions should be addressed directly to the author of the material. The e-mail address of the author may be available together with the learning object. Some authors may also provide other means of communication, such as their telephone number.

COPYRIGHT LICENSING OPTIONS

(a) for Licensors

1. How do I offer a learning object under an CC BY-NC-SA copyright licence?

Before applying a Creative Commons licence to a learning object, you need to make sure you have the authority to do so. To offer a work under a Creative Commons, or other, copyright licence you must be the person who owns the copyright in the work or have their permission.

If the work was created during the course of employment, then your employer probably owns the rights to the work - meaning only they can decide to apply a Creative Commons licence. You should review the terms of your employment agreement to see who owns intellectual property produced in the course of employment.

If you are combining works made by other people to create a derivative work or working collaboratively with other people, you need to make sure that you have the other creators' permission before offering the end result under a Creative Commons licence.

2. What are the terms and conditions of an CC BY-NC-SA licence?

Attribution: In order to preserve moral rights of authors, they must be credited for their works every time someone makes use of them. Attribution is not related to financial compensation; it just means that you indicate who created the work I used.

Non-Commercial: Non-commercial indicates that you can only use the licensed work for personal purposes. Non-commercial also means use by an Educational Institution or a person acting under its authority. It excludes any commercial use (including professional, political or promotional uses). If you would like to use a work for a commercial purpose, you should first contact the creator and discuss the possibility of a commercial licence.

Share-Alike: This provision determines that whoever builds on an original work has to share it on the same licensing conditions of the original works.

3. So “Non-Commercial?” means that the work cannot be used commercially?

Not quite. The “Non-Commercial” condition means that you do not receive the commercial rights via an CC BY-NC-SA licence. You can always approach the licensor directly to see if they will separately license you the commercial rights.

4. What if I change my mind?

CC licences are non-revocable. This means that you cannot stop someone, who has obtained your work under an CC BY-NC-SA licence, from using the work according to that licence. You can stop distributing your work under an CC BY-NC-SA licence at any time you wish; but this will not withdraw any copies of your work that already exist under an CC BY-NC-SA licence from circulation, be they verbatim copies, copies included in collective works and/or adaptations of your work. So you need to think carefully when choosing an CC BY-NC-SA licence to make sure that you are comfortable with the consequences.

5. *Do I need to sign something or register to obtain a CC licence?*

No. Creative Commons does not keep track of nor register creative works that have been licensed under a Creative Commons licence. Creative Commons licences are designed for you to choose and apply them independently. Creative Commons licences are automatically binding upon people who use the work to which they are attached; this is because the Creative Commons “Some Rights Reserved” button - and hyperlinked copyright licence - is deemed to provide sufficient notice of the terms and conditions to prospective users.

6. *What is the Commons Deed? What is the legal code? What does the html/metadata do?*

Creative Commons licences are expressed in three different formats: the Commons Deed (human-readable language), the Legal Code (lawyer-readable language); and the metadata (machine-readable language).

The Commons Deed is a summary of the key terms and conditions of the actual copyright licence (read: Legal Code) - that is, what others can and cannot do with the work. The Commons Deed itself has no legal value though its terms and conditions are synonymous with the Legal Code.

The Legal Code is the actual copyright licence; it is drafted by lawyers and enforceable in a court of law.

The Machine Code is the metadata describing the key licence terms and other material details of the work. The inclusion of Machine Code allows the licence to be located and interpreted by search engines and Internet browsers.

7. *I don't like the way a person has used my work in a derivative work or included it in a collective work; what can I do?*

If you do not like the way that a person has made a derivative work or incorporated your work into a collective work, under the CC BY-NC-SA licence, you may request removal of your name from the derivative work or the collective work.

8. *What happens if someone misuses my CC-licensed work?*

An CC licence terminates automatically if someone uses your work contrary to the licence terms. This means that, if a person uses your work under an CC BY-NC-SA licence and they, for example, fail to attribute your work in the manner you specified, then they no longer have the right to continue to use your work. This only applies in relation to the person in breach of the licence; it does not apply generally to the other people who use your work under an CC BY-NC-SA licence and comply with its terms.

You have a number of options as to how you can enforce this; you can consider contacting the person and asking them to rectify the situation and/or you can consider consulting a lawyer to act on your behalf. For information about how you may be able to locate a suitably qualified lawyer, please contact your local law society.

9. *Will CC Canada help me enforce my licence?*

Unfortunately, CC Canada is not able to provide legal advice or legal services to assist

you with enforcing the licences. We are not a law firm.

10. *Can I still make money from a work I make available under an CC BY-NC-SA licence?*

Absolutely. The non-commercial licence option is an inventive tool designed to allow people to maximize the distribution of their works while keeping control of the commercial aspects of their copyright. An CC licence is non-exclusive, which means you are not restricted to only offering the learning object under an CC BY-NC-SA licence; you can also enter into other revenue-generating licences in relation to your work.

To make one thing clear that is sometimes misunderstood: the "noncommercial use" condition applies only to others who use your work, not to you (the licensor). By offering your work under an CC BY-NC-SA copyright licence, you impose the "noncommercial" condition on the users (licensees). However, you, the creator of the work and/or licensor, may at any time decide to use it commercially. People who want to copy or adapt your work, "primarily for monetary compensation or financial gain" must get your separate permission first.

11. *Do I need to register my copyright in order to use an CC licence?*

No. Copyrights do not need to be registered. As soon as the work is fixed in a medium, you become the owner of the copyright. For example, the moment you put pen to paper, print a photograph or record a song, the copyright in the work is owned by the creator. While copyrights can be registered with the [Canadian Copyright Office](#), this is not required to prove ownership.

12. *Do I need a copyright notice to protect my work?*

You do not need to make use of a copyright notice to secure copyright protection. However, a copyright notice can be useful because it clearly signals to people that you believe you own copyright in your work, what the terms and conditions of its use are (if any) and who to contact for further information.

13. *Are CC licences enforceable in a court of law?*

The CC BY-NC-SA Legal Code has been drafted with the intention that it will be enforceable in court. However, we cannot predict how different courts across Canada will react to a certain provision. The CC BY-NC-SA licence contains "severability" clauses -- meaning that, if a certain provision is found to be unenforceable in a certain place, that provision and only that provision drops out of the licence, leaving the rest of the agreement intact.

(b) for Licensees

1. *Does using an CC BY-NC-SA-licensed work give me all the rights I need?*

You should be aware that the CC BY-NC-SA licence contains a disclaimer of warranties, so there is no assurance whatsoever that the licensor has all the necessary rights to permit reuse of the licensed work. The disclaimer means that the licensor is not guaranteeing anything about the work, including that he/she owns the copyright to it, or that he/she has cleared any uses of third-party content that his/her work may be based on or incorporate. This is typical where works are made widely

and freely available for reuse at no charge.

However, warranties and indemnities are best determined by private bargain, so that each licensor and licensee can determine the appropriate allocation of risk and reward for their unique situation. One option then would be to use private contract to obtain a warranty and indemnification from the licensor, although it is likely that the licensor would charge for this benefit.

2. How do I properly attribute an CC BY-NC-SA-licensed work?

When using a work under an CC BY-NC-SA licence, the proper way of accrediting is: (1) to keep intact any copyright notices for the Work; (2) credit the author, licensor and/or other parties (such as a wiki or journal) in the manner they specify; (3) the title of the Work; and (4) the Uniform Resource Identifier for the work if specified by the author and/or licensor. You also need to provide the Uniform Resource Locator for the CC licence with each copy of the work that you make available.

3. If I use an CC BY-NC-SA-licensed work with other works, do I have to license everything else on the same terms?

Yes. Because of the way that the ShareAlike licence element operates, the resultant work will need to be licensed under the same licence as the original work. If you include an CC BY-NC-SA-licensed work in a “collective work” (ie. a collection of works in their exact original format, not adaptations), then you only need to continue to apply the CC BY-NC-SA licence to that work. You do not need to apply it to the entire collection.

4. What happens if I want to make a different use of the work?

If you want to use an CC BY-NC-SA-licensed work in a manner that is not permitted under the terms of the CC BY-NC-SA licence, you need to contact the creator and/or licensor and ask for their permission. If you use an CC BY-NC-SA-licensed work contrary to the terms of the CC BY-NC-SA licence, your right to use the work terminates and you could be sued for infringement of copyright.

5. Can I combine two different CC BY-NC-SA-licensed works? Can I combine an CC BY-NC-SA-licensed work with another work?

Generally yes. However, an CC BY-NC-SA licence contains a ShareAlike condition. This requires derivative works (ie. the result of two works combined) to be licensed under the same licence elements. If you are combining a work licensed under CC BY-NC-SA with another work, you need to make sure that you are able to license the resulting work under an CC BY-NC-SA licence.