The tragedy of the commons

The Creative Commons is full of potential for artists everywhere – so why is most of it untapped? Perhaps **Marco Fioretti** can explain...

Creative Commons (CC) resources are all around us, and continue to multiply by the day. You can find tons of CC texts, web pages, graphics, pictures, audio and video clips through the advanced search functions of Flickr or Google. Barack Obama's change.gov website uses CC, showing that even the president of the USA knows what we're talking about here. That's cool, but for those of us who need enlightening, what is the Creative Commons?

Originally, the word 'commons' indicated those elements of the environment, like land, seas, rivers and air, that people owned, used and enjoyed together. Today there are also cultural commons including art and historical landmarks, service-related commons (public health, education or management of drinkable water) and scientific commons, like the knowledge collated by the Human Genome Project. A more detailed definition can be found at the Commons Institute (**www.mercury.org.au/tci home.htm**).

The Creative Commons (**http://creativecommons.org**) is an international movement started by Stanford law professor Lawrence Lessig to deal with all those creative works protected by copyright law, including text, audio, pictures and video of any subject, in any format. CC encourages authors to put their works into a commons, where they and everybody else can use, copy, remix and redistribute everything, thanks to copyright terms that are much more permissive than those loved by big the entertainment corporations. To make this possible, Creative Commons provides several licences that authors can use to express how other people are allowed copy or redistribute those works, use them for derivative works, and make money from them without asking permission or paying royalties to the author.

A tour in CC land

There are a couple of things you need to have clear about CC before you read on. The first is that the rights granted through CC licencing can only be in addition to those already present in copyright law, like fair use or fair dealing. The second is that you can apply CC licences only to your own, original work; in other words, you can't legally incorporate somebody else's copyrighted work into your own because you want to distribute the result under a CC licence.

Is Creative Commons here to stay, or is it just another passing fad invented by interweb hippies? Is it, like the world wide web in its beginnings, still restricted to the English-speaking world? Are people outside the anglosphere using CC, and if so, how?

LXF116.feature2 52 20/1/09 10:28:58 am

Creative Commons: the case in favour

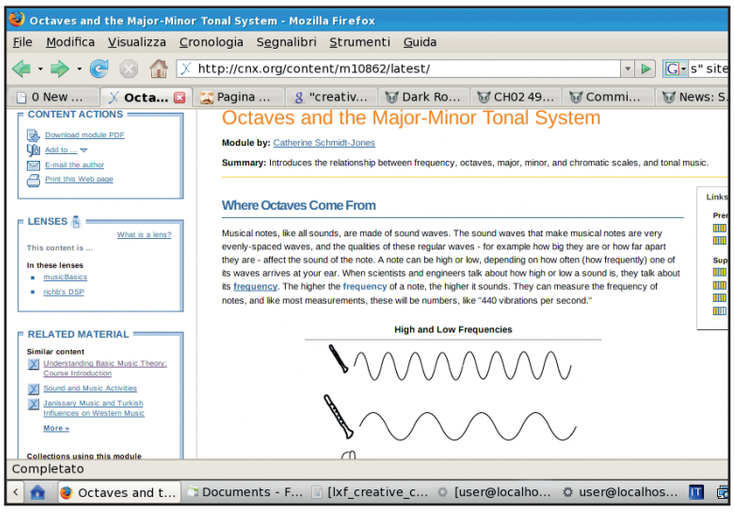
At first glance, the CC ecosystem is alive and flourishing. The official showcase for the project is at **http://creativecommons.org/commoners**, but there is already more CC content than you can shake a stick at at portals such as DeviantArt, YouTube, Instructables.com and the online bookstore Lulu.

Mediacow (**http://mediacow.tv**) is an internet video community that makes it easy for social activists to produce and share their own news reports and documentaries under CC licences. In a similar vein, Daniel Yucra, free software activist and coordinator of the **SomosLibres.org** community told us that CC is increasingly popular in Peru, "not only for... teaching documents or artistic works: several newspapers and news websites, like **www.surnoticias.com**, regularly use CC licensing".

It's educational

When it comes to education, there are already many teachers and experts worldwide trying to build a really open system for textbooks and other educational material. The biggest CC success in this field, at least for content in English, is probably the Connexions portal (**http://cnx.org**). One of its more popular authors is Catherine Schmidt-Jones, whose textbook, *Basic Music Theory*, has so far been viewed seven million times (**http://cnx. org/content/col10363/latest**). Another popular portal of the same kind is **www.opentextbook.org**.

South Africa and California also have their own programmes (**www.nongnu.org/fhsst** and **www.opensourcetext.org** respectively) to bring down the enormous cost of textbooks. In Italy, the Department for Innovation and Technology of the Ministry of Public Administration has recently launched a website at **www.innovascuola.gov.it** to explain to teachers and students how to create CC learning material and publish it inside an online open digital library. The National University of Cordoba, Argentina, has its own OpenCourseWare initiative (**http://ocw.unc.edu.ar**), which is based on Creative Commons, and the same is true for other Latin America NGOs, like **www.gleducar.org.ar** or the 'Self' project of the Via Libre Foundation (**www.vialibre.org.ar/proyectos/self**) whose main mission is to spread free software tools and values in schools.



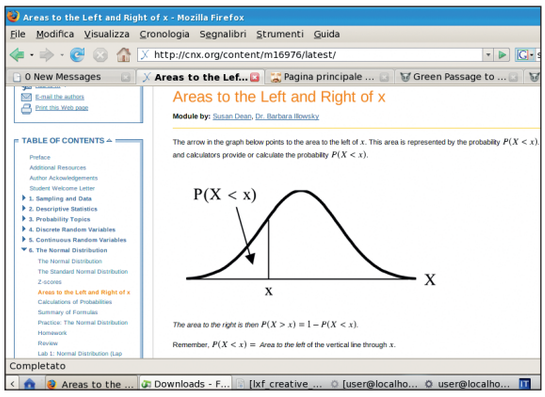
› **The *Basic Music Theory* textbook at Connexions has had seven million readers.**

> **"At first glance, the Creative Commons ecosystem is alive and flourishing."**

Creative Commons fever has spread to all types of artistic expression and design. The SomeRightsReserved shop from the UK cooperative KithKin (**www.kith-kin.co.uk/shop**) features CC products as diverse as design projects, music and instruction manuals for those wishing to demonstrate outside the Palace of Westminster.

Gianluca Bernardo, singer and guitarist with the Italian band Rein (**www.rein99.it**), told us that, in order to only use CC licences, the band cancelled its subscription to the Italian royalty collection agency. Gianluca is also a member of the Popular Front for Free Music (**www.fpml.it**), a group of artists formed about four years ago whose guidelines are cooperation and sharing. Their main achievement so far is the CC-licensed *Liberalarte!* music collection (**http://linux-club.org/node/2949**) which at time of writing consists of four CDs featuring dozens of musicians.

Also in a musical vein, a great amount of Brazilian contemporary music is simply produced outside the normal studio system. In the city of Belém, for example, 'tecno-brega' »



› **The *Collaborative Statistics* textbook, one of the newest CC titles from Connexions.**

› **The mythical Maltese Tiger, seen here in its made-up blue glory thanks to the work of Guiam and Creative Commons.**

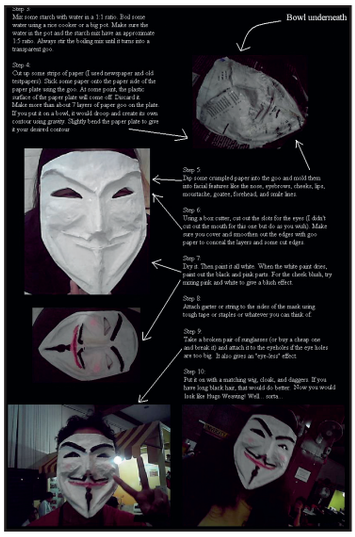
LXF116.feature2 53 20/1/09 10:29:0 am

The tragedy of the commons

» music parties attract thousands of people every weekend, and live recordings are burned on to CDs after each party as advertising material to promote the next one: in such a context, you don't really need to bother with CC or any other form of copyright.

CC is, instead, an important part of the Canto Livre movement (**www.direitorio.fgv.br/cts**), created after an idea of Brazilian musician Gilberto Gil, who is also Brazil's Minister for Culture. Canto Livre, which is Portuguese for 'free (as in free jazz) singing', is a certified P2P infrastructure that should give all Brazilian music, from tecno-brega to funk, carioca and forrò, a forum for sharing, remixing, collective creation and intellectual generosity.

> **"No system that deals with human creativity can keep everybody happy."**



› **DeviantArt also contains CC instructions like this one from Psycho_stress, but if you need CC instructions you'd better visit websites like Instructables.com.**

Creative Commons: the case against

No system to deal with human creativity can keep everybody happy all the time, and Creative Commons is no exception. In spite of all the successes we've mentioned so far, many people all over the world dislike it. The most common criticism is that CC doesn't fight copyright, it just puts a nice, much friendlier face on it. CC leaves unchallenged the concept that property rights on creative works are a good thing, and unfairly favours the creators of culture over the consumers, as only authors decide what others can do with their work. Another common objection is that there are too many Creative Commons licences, which creates confusion and even serves to limit the free circulation of content (as in the Wikipedia case, below). Some people also worry that, since CC makes no distinction between alternative file formats of the same digital work, one could grab high-quality CC-licensed multimedia audio or video, mix them and only release for free a version in some lossy format.

Some people openly fear Creative Commons. More exactly, they fear that if you try to convert artists to CC who had never thought of copyrighting their works before, they may simply fall in love with the concept of making money through full copyright and stick to it. Last but not least, the majority of today's CC-licensed works are only available online, making them irrelevant in places where fast internet access is absent or too expensive.

Priscilla Maliwichi, a computer technician and free software activist at the University of Malawi, told us that "in Malawi, we don't have a Creative Commons movement, and personally, I am not interested in starting one. I do know, however, that in South Africa this movement is very hot, and I imagine that South African Creative Commons laws and practices may easily suit the Malawian context with just a few changes".

Mexico has a national Creative Commons website (**http://creativecommons.org.mx**) but, says Debian developer Gunnar Wolf "my impression is that there is very little done in Mexico about this. A couple of years ago, a group of lawyers who are sympathetic to CC translated and adapted the CC licences, but without particular results so far".

What does the rest of the world think?

We also got several confirmations of how weird and potentially risky it can be to preach CC outside western countries when we spoke to Carolina Botero and Lila Pagola, two members of the CC communities in Colombia and Argentina. Carolina told us that that "countries like Colombia have international commitments that oblige us to follow international IP laws, and our official institutions are highly dependant on this influence. In this context, proposing CC licences is a good idea, especially within educational, scientific or artistic institutions. There is already a national repository for educational resources, and CC is used by our Biodiversity Information System (**www.siac.net.co**). Social practices, however, are an entirely different matter (even ignoring, for simplicity, indigenous communities, which have an altogether different concept of property). Initially, many authors and artists just don't understand why they would need something like CC. However, when we explain the legal concept, most of the time those people realise what they can do about control and making money and eventually go for full copyright, instead of the 'open' solution.

Lila told us almost the same things about Argentina: "Around here, advocating CC implies explaining how

GFDL vs CC

Until recently, the single biggest product of the free culture movement – Wikipedia – was licensed under the GNU Free Documentation Licence (GFDL). Sadly the GFDL, which was conceived almost exclusively for technical documentation, did "not work well (and in some cases, at all) for certain important kinds of culture", as Lawrence Lessig puts it. The resulting paradox was ugly and embarrassing: the encyclopaedia that everybody can freely edit and reuse couldn't exchange content with other works created just to be freely shared and reused.

Luckily on 3 November 2008, the Free Software Foundation released a new version of GFDL that permits certain wikis to be relicensed under one CC licence, as long as the relicensing is completed by 1 August 2009. That means that Wikipedia may finally become interoperable with other projects.

LXF116.feature2 54 20/1/09 10:29:2 am

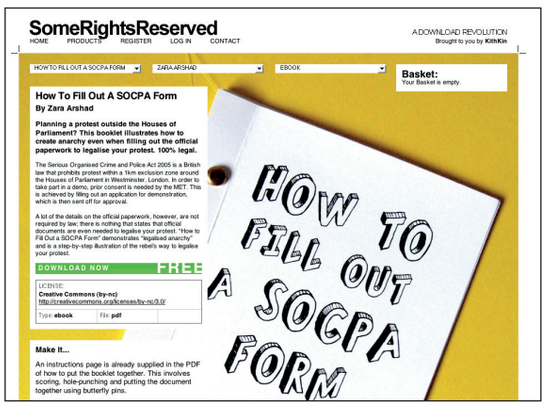
copyright should work to teachers whose monthly salary [is equivalent to] just one licence of *Adobe Photoshop*. In such a context, CC and copyleft really look like artificial problems, to say the least. Maybe for institutions it's different, since they are easily accountable, but for students and teachers photocopying work is so widespread as to be completely natural.

Asian attitudes

Anh Hung Nguyen, who's currently developing an e-learning program for disadvantaged children (**http://n-hero.blogspot.com**), told us: "Here in Vietnam, books are almost exclusively published by state publishers and don't adopt CC. Most Vietnamese don't pay attention to licences, since they can get most things for free and are willing to violate them should they become an obstacle. In general, I haven't heard of any local projects or people that use CC, except for a few people who use CC for their photos on Flickr or Picasa. It seems that, CC or not, we don't have a lot of content to share over the internet".

Sasi Kumar, of FSF India, noted that in his country, "Education was historically confined to the upper castes. Where permitted, however, all works could be studied and used by anyone. The idea of copyright came from the west. Restricting knowledge is not part of our culture. As a result, people don't feel that it is wrong to take photocopies, for instance, of material they need, even if it is copyrighted. Thinking otherwise is, again, a result of western influence".

Indian journalist Frederick Noronha (**http://fn.goa-india.org**) basically agrees with Sasi: "There is an overall culture of sharing knowledge here, even if this isn't called 'Creative Commons'. We had the launch of CCIndia in early 2007, but there seems to be little activity there... I think CC is a bit too conservative and too respectful of copyright issues. Copyright has not worked for us (in the developing world) for generations. Generally speaking, copyright in any form, including CC, doesn't fit in too well with Asian ideas of knowledge, since it enables those controlling knowledge and information over the rest, and we find it impossible to emerge winners in this game. It is a colonial law, not meant to serve the interest of the people of those parts of the globe that are not ahead in the information race! Why should we be as respectful to it, as, say, Lawrence Lessig is?"



SomeRightsReserved offers this free guide to getting police permission to demonstrate outside parliament.

Resources

» There's a thorough summary of various critiques and discussions about CC at **http://p2pfoundation.net/Creative_Commons_-_Critiques**.
» Michel Bauwens, head of the Foundation for P2P alternatives, also has lots of relevant links at **http://delicious.com/mbauwens/Creative-Commons** and **http://delicious.com/mbauwens/Remix-Culture**.
» Finally, the CopySouth dossier (**www.copysouth.org**) is a must-read for everybody who wants to get the big picture about copyright, copyleft and CC.

Minhaaj Rehman, an educational consultant, open source advocate and contributor to Wikipedia and Wikieducator.com from Pakistan has even stronger opinions about CC: "it might be a solution to western problems, as it would reduce costs for western students subjected to exploitative laws. However, CC is impacting Eastern societies and less developed countries in a way that is exactly the opposite of what we want here. In Pakistan, pirating materials is a great, common way to distribute them to students who can't afford original versions, because it would take significant time and resources to re-create equivalent content of the same quality.

> **"Nobody in Pakistan knew about copyright, copyleft or CC a decade ago."** Minhaaj Rehman

"Nobody in Pakistan knew about copyright, copyleft or CC a decade ago. Even when academics knew about copyright, they just didn't deal with it, primarily because of eastern tradition and religious injunctions of collectivism and open literacy. CC and copyleft movements have made it harder, here in Pakistan at least, for poor students and educators to use books. Sure, they inspired academics to copyleft their work, but at the same time, they convinced them that copyright, which should never exist in the first place, is good. Whereas content never belongs to anyone, as it comes from previous experience and incremental learning. Here in the east we need to abolish copyright, nothing less. That's why I don't think CC is good for developing countries. To me, even things like Richard Stallman's FSF accepting support from organisations like Unesco (which do nothing to fight the problems I just mentioned), or Wikipedia's profiteering by asking for donation of $6 million this year are proofs that both copyright and copyleft are partners in restricting human rights and freedom".

So, is CC worth it?

Despite the iniquities of the current copyright system, this writer at least doesn't think that abolishing copyright altogether would be a good thing. I am also convinced that CC is not the solution to all problems but remains an excellent thing, in spite of its critics. CC can already contribute to a much more open culture and education for all those people who don't have any more urgent problem and gives (in the medium and long term, at least) much better opportunities for all.

Many of the limits of CC, and many of the problems that CC simply can't solve, come from one simple fact. We already explained that you can apply CC licences only to new, original works. Now, if the majority of existing creative works were in the public domain, (almost) everybody would be happy, but what actually happens is just the opposite: the overwhelming majority of today's culture is copyrighted and will remain so for decades. In other words, if copyright (even for existing works) were simply reduced to a few years after publication (no more than 10), authors and artists would still be free to make money with their new works through copyright, copyleft, CC or any other system, but the community would still have plenty of good stuff in the public domain to choose from. LXF

LXF116.feature2 55 20/1/09 10:29:3 am