

COPYRIGHT AND OPEN EDUCATIONAL RESOURCES

LESSON 2



Roadblocks and Solutions

Humans have an incredible capacity to invent, use, and improve tools and technologies. Take a moment and think about the societal impact of things like writing and printing, or the plow and fertilizer, or railroads and airplanes. Each of these innovations was revolutionary, fundamentally changing our abilities to communicate, feed our families, and transport ourselves and other things. In recent decades, we have invented entirely new classes of tools, including computers and networks, which are equally revolutionary. But much like a three-year-old sifting through Dad's tool box, we don't even begin to realize the capacity we hold in our hands.

When you first started this course, you read about the epiphany I had while creating a Web-based calculator that could be used by millions of people simultaneously. I realized that technology had given us the ability to infinitely copy and share information and educational resources with virtually no expense. Think of what that could mean for financial-

ly-strapped school districts, college students, and families who choose to teach their kids at home. And on a more global scale, what could freely available educational resources mean for people in impoverished parts of the world? My "calculator epiphany" showed me a brief glimpse of the power and capacity of new tools to revolutionize education.

Unfortunately, I've also come to learn that technological capability is rarely the thing that stands in the way of revolution. *Policy* is the enemy of progress far more frequently. In this lesson we'll examine one concrete example: the way copyright law has acted as a major roadblock to the kind of proliferation and adaptation of educational resources enabled by the Internet.

This lesson (and this course in general) is an example of how information can be legally repurposed and adapted without the hassle of getting the authors permission first. Portions of the content come from authors who have made their material free to use and modify. In turn, this material

...TECHNOLOGICAL CAPABILITY IS RARELY THE THING THAT STANDS IN THE WAY OF REVOLUTION. POLICY IS THE ENEMY OF PROGRESS FAR MORE FREQUENTLY.

is licensed in a way that allows others to use it and adapt it as well. This type of open sharing is not allowed under traditional copyright law.

These topics can often evoke a wide range of opinions and feelings. When you feel the desperate need to tell someone what you think about what you're reading, I invite you to discuss what you're thinking by clicking the link to the discussion board.



COULD YOU BE A
CRIMINAL? [CLICK HERE](#)
FOR A WORD FROM DR.
WILEY.

What You'll Learn To Do

1. Understand the intent and function of copyright law.
2. Understand the principle of fair use and its limitations.
3. Understand the conceptual framework underlying the Creative Commons licenses.
4. Apply your understanding of license compatibility issues to produce legal remixes of CC and GFDL licensed material.

OBJECTIVE 1

Understand the intent and function of copyright law

I realize that copyright history may not seem like the most exciting topic at first, but please trust me when I tell you that a brief foray into the history of copyright law is necessary for our purposes. Understanding why we have the Creative Commons licenses will help you understand how they function—these licenses are part of the solution to the problems created by copyright law. Tools like the Creative Commons licenses position us to move forward toward the potential that the Internet promises. By understanding Creative Commons licensing, you will be in a position to be both a beneficiary and a contributor of open educational resources.

A Brief History of Copyright

The power to establish “creative property” rights is granted to Congress in a way that, for our Constitution, at least, is very odd. Article I, section 8, clause 8 of our Constitution states that

Congress has the power to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Rights to their respective Writings and Discoveries.

We can call this the “Progress Clause,” because notice what this clause does not say. It does not say Congress has the power to grant “creative property rights.” It says that

Congress has the power to promote progress. The granting of power is its purpose, and its purpose is a public one—its purpose is not to enrich publishers, nor even primarily to reward authors.

The Progress Clause expressly limits the term of copyrights. Originally, the English limited the term of copyright to assure that a few individuals would not exercise disproportionate control over culture by exercising disproportionate control over publishing. We can assume the Framers followed the example of the English for a similar purpose. Indeed, unlike the English, the Framers reinforced that objective by requiring that copyrights extend “to Authors” only.

The design of the Progress Clause reflects something about the Constitution’s design in general. To avoid problems, the Framers built in structure. To prevent the concentrated power of publishers, they built a structure that kept copyrights short and away from publishers. To prevent the concentrated power of a church, they banned the federal government from establishing a church. To prevent concentrating power in the federal government, they built structures to reinforce the power of the states—including the Senate, whose members were at the time selected by the states, and an electoral college, also selected by the states, to select the president. In each case, a structure built checks and balances into the constitutional frame, structured to prevent otherwise inevitable concentrations of power.

I doubt the Framers would recognize the regulation that we call “copy-right” today. The scope of that regulation is far beyond anything they probably ever considered. To begin to understand what they did, we need to put our “copyright”

in context—we need to see how it has changed in the years since they first struck its design.

When the first Congress enacted laws to protect creative property, it faced uncertainty about the status of creative property. Many states had passed laws protecting creative property, and some believed that these laws simply supplemented common law rights that already protected creative authorship. This meant that there was no guaranteed public domain in the United States in 1790. If copyrights were protected by the common law, then there was no simple way to know whether a work published in the United States was controlled or free. This lingering uncertainty would make it difficult for publishers to rely upon a public domain to reprint and distribute works.

That uncertainty ended after Congress passed legislation granting copyrights. Because federal law overrides any contrary state law, federal protections for copyrighted works displaced any state law protections. A federal statute meant that any state copyrights would eventually expire.

Changes in the Duration of Copyright Protection

In 1790, Congress enacted the first American copyright law. It created a federal copyright and secured that copyright for fourteen years. If the author was alive at the end of that fourteen years, then he or she could opt to renew the copyright for another fourteen years. If the author did not renew the copyright, the work passed into the public domain.

While there were many works created in the United States in the first ten years of the Republic, only five per-

“PROGRESS CLAUSE”

DESIGNED TO:

1. PROMOTE PROGRESS,
2. LIMIT POWER OF PUBLISHERS,
3. LIMIT TERM OF COPYRIGHT

NOT NECESSARILY

INTENDED TO:

1. GRANT CREATIVE PROPERTY RIGHTS,
2. ENRICH PUBLISHERS
3. REWARD AUTHORS

ORIGINALLY, COPYRIGHT PROTECTION LASTED 14 YEARS.

LONGER COPYRIGHT TERMS = LESS AND LESS MATERIAL MOVING INTO THE PUBLIC DOMAIN IN OUR LIFETIME.

cent of the works were actually registered under the federal copyright regime. Of all the work created in the United States both before 1790 and from 1790 through 1800, 95 percent immediately passed into the public domain; the balance would eventually pass into the public domain within twenty-eight years at most, and more likely within fourteen years.

This system of renewal was a crucial part of the American system of copyright. It assured that the maximum terms of copyright would be granted only for works for which they were wanted. After the initial term of fourteen years, if it wasn't worth it to an author to renew the copyright, then it wasn't worth it to society to insist on the copyright.

Fourteen years may not seem long to us, but for the vast majority of copyright owners at that time, it was long enough. In fact, only a small minority of authors actually renewed their copyright after fourteen years; the balance allowed their work to pass into the public domain.

Even today, this structure would make sense. Most creative work has an actual commercial life of just a couple of years. Most books fall out of print after one year. When that happens, the used books are traded free of copyright regulation—because giving an existing book to a friend does not involve producing a new copy. (Copyright law regulates when you are allowed to make a new copy—it does not regulate what you can do with an existing copy.) Thus the books are no longer effectively controlled by copyright. The only practical commercial use of the books at that time is to sell the books as used books; that use—because it does not involve creating an additional copy—is effectively free.

In the first hundred years of the Republic, the term of copyright was changed only once. In 1831, the term was

increased from a maximum of 28 years to a maximum of 42 by increasing the initial term of copyright from 14 years to 28 years. In the next fifty years of the Republic, the term increased once again. In 1909, Congress extended the renewal term of 14 years to 28 years, setting a maximum term of 56 years.

Then, beginning in 1962, Congress started a practice that has defined copyright law since. **Eleven** times in the last forty years, Congress has extended the terms of existing copyrights; **twice** in those forty years, Congress extended the term of future copyrights. Initially, the extensions of existing copyrights were short, a mere one to two years. In 1976, Congress extended all existing copyrights by nineteen years. And in 1998, in the Sonny Bono Copyright Term Extension Act, Congress extended the term of existing and future copyrights by twenty years.

The effect of these extensions is simply to delay the passing of works into the public domain. Thus, in the twenty years after the Sonny Bono Act, while one million patents will pass into the public domain, zero copyrights will pass into the public domain by virtue of the expiration of a copyright term.

The effect of these extensions has been exacerbated by another, little-noticed change in the copyright law. Remember I said that the Framers established a two-part copyright regime, requiring a copyright owner to renew his or her copyright after an initial term. The requirement of renewal meant that works that no longer needed copyright protection would pass more quickly into the public domain. The works remaining under protection would be those that had some continuing commercial value.

The United States abandoned this sensible system in 1976. For all works created after 1978, there was only one copyright term—the maximum term. For “natural” authors (people), that term was life plus fifty years. For corporations, the term was seventy-five years. Then, in 1992, Congress abandoned the renewal requirement for all works created before 1978. All works still under copyright would be accorded the maximum term then available. After the Sonny Bono Act, that term was life plus 70 years for works authored by people and 95 years for works produced by corporations.

This change meant that American law no longer had an automatic way to assure that works that were no longer being used commercially passed into the public domain. And indeed, after these changes, it is unclear whether it is even possible to put works into the public domain. The public domain is orphaned by these changes in copyright law. Despite the Framers’ requirement that terms be “limited,” we have no evidence that anything will limit them.

The effect of these changes on the average duration of copyright is dramatic. In 1973, more than 85 percent of copyright owners failed to renew their copyright. That meant that the average term of copyright in 1973 was just 32.2 years. Because of the elimination of the renewal requirement, the average term of copyright is now the maximum term. In thirty years, then, the average term has tripled, from 32.2 years to 95 years.

Information provided by Cornell University shows the [various terms for copyrighted materials](#).

Changes in Scope of Copyright Protection

The “scope” of a copyright refers to the range of rights granted by the law. The scope of American copyright has also changed dramatically over the years. Those changes are not necessarily bad. But we should understand the extent of the changes if we’re to keep this debate in context.

In 1790, the scope of copyright was very narrow. Copyright covered only “maps, charts, and books.” That means it didn’t cover, for example, music or architecture. More significantly, the right granted by a copyright gave the author the exclusive right to “publish” copyrighted works. That means someone else violated the copyright only if he or she republished the work without the copyright owner’s permission. Finally, the right granted by a copyright was an exclusive right to that particular book. The right did not extend to what lawyers call “derivative works.” It would not, therefore, interfere with the right of someone other than the author to translate a copyrighted book, or to adapt the story to a different form (such as a drama based on a published book).

This, too, has changed dramatically. While the contours of copyright today are extremely hard to describe simply, in general terms, the right covers practically any creative work that is reduced to a tangible form. It covers music as well as architecture, drama as well as computer programs. It gives the copyright owner of that creative work not only the exclusive right to “publish” the work, but also the exclusive right of control over any “copies” of that work. And most significant for our purposes here, the right gives the copyright owner control over not only his or her particular work, but also any “derivative work” that might grow out of

the original work. In this way, the right protects the creative work more broadly and protects works that are based in a significant way on the initial creative work, such as a film adaptation of a novel.

A Copyright on Everything

At the same time that the scope of copyright has expanded, procedural limitations on the right have been relaxed. I've already described the complete removal of the renewal requirement in 1992. In addition to the renewal requirement, for most of the history of American copyright law, there was a requirement that a work be registered before it could receive the protection of a copyright. There was also a requirement that any copyrighted work be marked either with that famous "©" symbol or the word "copyright." And for most of the history of American copyright law, there was a requirement that works be deposited with the government before a copyright could be secured.

The reason for the registration requirement was the sensible understanding that for most works, no copyright was required. Does your child want or need copyright for the crayon drawing hanging on your refrigerator? Again, in the first ten years of the Republic, 95 percent of works eligible for copyright were never copyrighted. Thus, the rule reflected the norm: Most works apparently didn't need copyright, so registration narrowed the regulation of the law to the few that

did. The same reasoning justified the requirement that a work be marked as copyrighted—that way it was easy to know whether a copyright was being claimed. The requirement that works be deposited was to assure that after the copyright expired, there would be a copy of the work somewhere so that it could be copied by others without locating the original author.

All of these "formalities" were abolished in the American system when we decided to follow European copyright law. There is now no requirement that you register a work to get a copyright; the copyright now is automatic; the copyright exists whether or not you mark your work with a "©," and the copyright exists whether or not you actually make a copy available for others to copy. Authors and publishers still register their copyrights because, even though copyright is granted automatically, you can't bring a copyright lawsuit for a work whose copyright has not been registered.

Consider a practical example to understand the scope of these differences.

If, in 1790, you wrote a book and you were one of the five percent who actually copyrighted that book, then the copyright law protected you against another publisher's taking your book and republishing it without your permission. The aim of the act was to regulate publishers so as to prevent that kind of unfair competition. In 1790, there were 174 publishers in the United States. The Copyright Act was thus a tiny regulation of a tiny



proportion of a tiny part of the creative market in the United States—publishers.

The act left other creators totally unregulated. If I copied your poem by hand, over and over again, as a way to learn it by heart, my act was totally unregulated by the 1790 act. If I took your novel and made a play based upon it, or if I translated or abridged it, none of those activities were regulated by the original copyright act. These creative activities remained free, while the activities of publishers were restrained.

Today the story is very different: If you write a book, your book is automatically protected. Indeed, not just your book. Every e-mail, every note to your spouse, every doodle, every creative act that's reduced to a tangible form—all of this is automatically copyrighted. There is no need to register or mark your work. The protection follows the creation, not the steps you take to protect it. That protection gives you the right (subject to a narrow range of fair use exceptions) to control how others copy the work, whether they copy it to republish it or to share an excerpt.

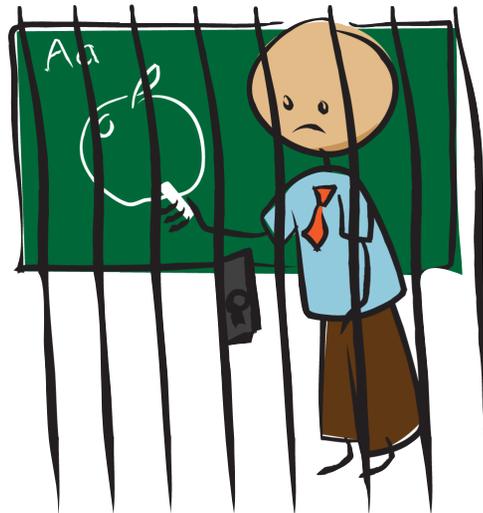
That much is the obvious part. Any system of copyright would control competing publishing. But there's a second part to the copyright of today that is not at all obvious. This is the protection of "derivative rights." If you write a book, no one can make a movie out of your book without permission. No one can translate it without permission. CliffsNotes can't make an abridgment unless permission is granted. All of these derivative uses of an original work are controlled by the copyright holder. The copyright, in other words, is now not just an exclusive right to your writings, but an exclusive right to your writings and a large proportion of the writings

inspired by them. This expansion is a significant change from the rights originally granted.

Copyright and Teachers

This is the copyright environment in which we live as teachers. Everything we produce, everything our students produce, everything produced by anyone, anywhere, is automatically copyrighted to the full extent of the law, whether the creator likes it or not.

Say you create a really great lesson plan that you want to share with your friends. When you copy the lesson plan to give to them, everything is fine. But if they copy the lesson plan and distribute it to their friends, they've broken the law—unless you have granted them a license to make and distribute copies. When you want to share something you've created with others, **and you want them to be free to share it with others, too**, you have to go out of your way to explicitly grant them a license to copy and redistribute your work. If you don't, all your friends who copy and share your work with others are considered criminals!



OBJECTIVE 2 Understand the principle of fair use and its limitations

Originally copyright law regulated only publishers, but the change in copyright's scope means that the law today regulates publishers, users, and authors. It regulates them because all three are now capable of making copies, and the core of the regulation of copyright law is related to making copies.

Imagine a book. Most of the things you can do with the book are unregulated by copyright law, because the uses don't create a copy. If you read a book, that act is not regulated by copyright law. If you give someone the book, that act is not regulated by copyright law. If you resell a book, that act is not regulated (copyright law expressly states that after the first sale of a book, the copyright owner can impose no further conditions on the disposition of the book). If you sleep on the book or use it to hold up a lamp or let your puppy chew it up, those acts are not regulated by copyright law, because those acts do not make a copy.

Obviously, however, some uses of a copyrighted book are regulated by copyright law. Republishing the book, for example, makes a copy. Publishing is therefore regulated by copyright law (and rightly so).

A tiny sliver of gray area exists between regulated and unregulated uses. These are otherwise regulated copying uses that remain unregulated because the law considers these "fair uses." Fair uses involve copying, but the law treats them as unregulated because public policy demands

that they remain unregulated. You are free to quote from a book, even in a review that is quite negative, without the author's permission, even though quoting it makes a copy. That copy would ordinarily give the copyright owner the exclusive right to say whether the copy is allowed or not, but the law denies the owner any exclusive right over such "fair uses" for public policy (and possibly First Amendment) reasons.

The possible uses of a work, then, are divided into three sorts: (1) unregulated uses, (2) regulated uses, and (3) regulated uses that are nonetheless deemed "fair," regardless of the copyright owner's views.

The Formal Definition of Fair Use

The idea of fair use was formally codified in the Copyright Act of 1976, 17 U.S.C. § 107:

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion

used in relation to the copyrighted work as a whole; and

4. the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Before you get too excited by the language saying that making “multiple copies for classroom use, scholarship, or research, is not an infringement of copyright,” look more closely at the fourth factor used to determine if a use is fair or not. When a publisher creates a textbook specifically for the purpose of selling it to students, making multiple copies of the book for classroom use will certainly have a **negative** “effect of the use upon the potential market for or value of the copyrighted work.”

The Risks of Claiming Fair Use

There is a significant legal risk associated with making regulated uses of copyrighted materials without permission and claiming “fair use.” The [Stanford Libraries Copyright and Fair Use Overview](#) says

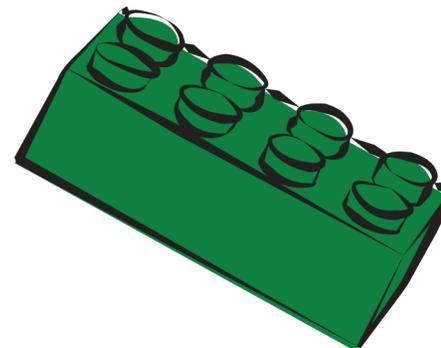
The difficulty in claiming fair use is that there is no predictable way to guarantee that your use will actually qualify as a fair use. You may believe that your use qualifies—but, if the copyright owner disagrees, you may have to resolve the dispute in a courtroom. Even if you ultimately persuade the court that your use was in fact a fair use, the expense and time involved in litigation

may well outweigh any benefit of using the material in the first place . . . Because there is a sizable gray area in which fair use may or may not apply, there is never a guarantee that your use will qualify as a fair use.

[Wikipedia](#) goes on to say

Because of the defendant’s burden of proof [that a use is fair], some copyright owners frequently make claims of infringement even in circumstances where the fair use defense would likely succeed in hopes that the user will refrain from the use rather than spending resources in his defense.

What is a teacher to do, then, if anything and everything is automatically and fully copyrighted, and fair use is a dangerous, risky defense? One answer is to use open educational resources instead of traditionally copyrighted material. In objective 3 you will learn why—from a legal perspective—open educational resources are a safe choice.



OBJECTIVE 3 Understand the conceptual framework underlying the Creative Commons licenses

After watching the videos, answer the questions below to check your understanding.

If you see the CC license, it means the author has elected to allow any use of their work without charge.

True False

CC licenses grant rights of use in advance. That means you know exactly what you can and cannot do with a resource without ever contacting the creator.

True False

Up to this point, I've focused mainly on the barricades created by copyright and the problems associated with fair use. Fortunately, the rest of the lesson focuses on solutions. Over a decade ago, in response to the serious overreaching of US copyright law you've already read about, several organizations decided to do what they could to make it possible for people to legally share their creative works, including pictures, videos, and yes—educational materials—with one another. The most popular of these initiatives is called Creative Commons. As opposed to the traditional “All Rights Reserved” mentality of standard copyright, Creative Commons provides a way for an author to tell the world that only **some** rights are reserved.

For some history about Creative Commons, check out this brief video from the project's launch in 2002 (which we can confidently use in this course because Creative Commons tells us we have permission to use it!).

<http://creativecommons.org/videos/get-creative>

And now, watch this more recent video (2008) about the project's progress:

<http://creativecommons.org/videos/a-shared-culture>

When I say Creative Commons is the most popular of

the organizations helping people share their creative works with each other, what people do I mean? Is anyone really even interested in free sharing? To answer that, take a look at a [spring 2009 announcement](#) about the number of photographs on the site flickr.com that use a Creative Commons license:

Over the last couple of weeks we've been keeping a close eye on the number of CC licensed photos of Flickr. Our calculations now show that Flickr has surpassed 100 million CC licensed photos sometime during the day on Saturday, March 21st, 2009. As of Monday, we're calculating the total number of CC licensed photos at 100,191,085.

Thanks to Creative Commons, there are literally hundreds of millions of photos, videos, audio clips, news stories, articles, and educational materials available on the Web—as long as you know that they exist and how to look for them.

How It Works

So how does Creative Commons help you share your creative works with others? And how does it help you know that other people are sharing their creative works with you? They help you share with a **license**, a written document that gives an individual or organization (the “licensee”) permission to use a creative work in clearly specified ways.

There are six core Creative Commons licenses:

Attribution (BY)

The Attribution License lets others copy, distribute, remix, tweak, adapt and build upon your work, even commercially, as long as they credit you as the original author. This is the most accommodating of the licenses offered, in terms of what others can do with your creative works. Go check out the [Attribution License](#) page to get a better idea of how the license looks to users.

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The Attribution Share Alike License lets others copy, distribute, remix, tweak, and build upon your work, even commercially, as long as they credit you as the original author and license their derivative creations under this same license (BY-SA).

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The Attribution Noncommercial Share Alike License lets others copy, distribute, remix, tweak, and build upon your work noncommercially, as long as they credit you and license their derivatives under this same license. All-new work based on yours will carry the same license, so any derivatives will also be noncommercial in nature.

Attribution Noncommercial No Derivatives (BY-NC-ND)

The Attribution Noncommercial No Derivatives License is the most restrictive of the six core licenses. This license is often called the “free advertising” license, because it allows others to download your works and share them with others, as long as they credit you and link back to you, but they can't change your work in any way or use your work commercially.

Better than Fair Use

When you see one of these logos on a Web site, book, CD, or elsewhere, the logo tells you exactly what permissions you have with regard to that particular creative work. For example, the materials available from MIT OpenCourseWare carry the BY-NC-SA license. That means that for any image, audio, video, or bit of text you find at MIT OCW, you already have permission to use, copy, share, translate, change, and remix it—provided you credit MIT OCW as the owner of the work, that you don't try to sell your copy or your derivative for profit, and that you share any new versions you make with the world under the BY-NC-SA license.

Open educational resources use the Creative Commons licenses, meaning that the worry and confusion relating to

BY - ATTRIBUTION
SA - SHARE ALIKE
ND - NO DERIVATIVES
NC - NONCOMMERCIAL

copyright, fair use, and the risk of lawsuits can be avoided by using OER and abiding by the terms of their licenses. Because it's so important, I'll say it again: Don't take chances with copyrighted materials and fair use claims when you can avoid them—OER are not only safe legally, they're free!

OBJECTIVE 3

Apply your understanding of license compatibility issues to produce legal remixes of CC and GFDL licensed material

As with most statements of fact, there are occasional exceptions to the statement “open educational resources use the Creative Commons licenses.” There are, in fact, a few OERs in the world that, for historical reasons, use a different license. It seems only natural to assume that an OER with a Creative Commons license could be mixed with an OER with a different license. Unfortunately, this is not the case. Some licenses are incompatible with others.

“But wait!” you cry, “If these sites both provide OERs, shouldn't I be able to mix them together without worry?” Of course you should—but you can't.

The largest exceptions to the rule that “all OERs use CC licenses” are Wikipedia and its sister projects. As of spring 2009, these sites use a license called the [GNU Free Documentation License](#) (GFDL). The GFDL has a clause that reads as follows:

You may copy and distribute a Modified Version of the Document under the conditions of sections 2 and 3 above, provided that you release the Modified Version under precisely this License.

Sounds like the Share Alike term in the Creative Commons BY-SA and BY-NC-SA licenses, right? The Share Alike term in the “lawyer version” of the CC licenses says the following:

You may Distribute or Publicly Perform an Adaptation only under: (i) the terms of this License; (ii) a later version of this License with the same License Elements as this License.

In other words, if you create a new version of a CC BY-SA licensed work, the new version must be licensed CC BY-SA. Likewise, if you create a new version of a GFDL licensed work, that new version must be licensed GFDL. Now, if you were to create something new that borrowed from both a BY-SA licensed work and a GFDL licensed work, which license would you apply to the resulting remix? Don't blow a gasket thinking about it—you couldn't apply either one, or both for that matter, without violating the terms of one of the licenses. This means that, for example, you can't remix material from Wikipedia (GFDL) with material from MIT OCW (BY-NC-SA) or with material from WikiEducator (BY-SA).

If you're thinking hard about the implications of the SA clause, you'll notice something more troubling than the incompatibility of some CC licenses with minority licenses such as the GFDL—you'll notice that some Creative Commons licenses are incompatible with each other! Continuing with the example above, how would you license the result of remixing material from MIT OCW (BY-NC-SA) with material from WikiEducator (BY-SA)? Again, mind your gaskets—you

GFDL CANNOT BE REMIXED WITH ANY CC LICENSE THAT HAS SA IN IT.

can't remix material from these two sites, because their licenses are incompatible.

The following is a compatibility chart for licenses within the Creative Commons suite (boxes without a "smiley" face indicate incompatibility).

Creative Commons Licenses Compatibility Table

Licenses	BY	BY-NC	BY-NC-SA	BY-NC-SA	BY-SA	BY-SA
BY	☺	☺	☺	☺	☺	☺
BY-NC		☺	☺	☺		
BY-NC-SA			☺			
BY-SA				☺		
BY-SA			☺		☺	
BY-SA						☺

Adapted from the Creative Commons [Compatibility Wizard](#).

This License Thing Seems Really Complicated

As people learn more about OERs, the idea of license incompatibility can scare them. You should keep in mind that, while OER licensing is slightly convoluted, traditional copyright is much more complicated (revisit [Cornell's copyright table](#) to refresh your memory).

Pay attention to the licenses of the OERs you use and obey the terms of those licenses, especially Noncommercial, No Derivatives, and Share Alike. If you do your best to understand the license and act in good faith, you should be in good shape. The easiest ways to violate the terms of a license are as follows:

- Making commercial or for-profit use of an OER with a license that includes the Noncommercial (NC) clause
- Making derivative works from an OER with a license that includes the No Derivatives (ND) clause
- Failing to share derivatives of an OER with a license that includes the Share Alike (SA) clause, under the same license

A common practice in the open education community is a rights holder notifying a violator that his or her actions are inappropriate and requesting that he or she make necessary changes. (After all, these are people who chose to openly license their material!) However, if you receive this sort of notice and refuse to comply, you greatly increase your chances of being on the receiving end of legal action.

OER Remix Game

Knowing what licenses can go together can be confusing at first, but with a little practice, it becomes easier. I've made a card game that I play with friends to get them familiar with remixing open educational resources. It's actually a lot of fun and really helps you master the legal art of remixing. Since we can't sit down and play a game of cards together,

I've made an electronic version for you to play here.

The goal of the game is to remix four different media types—text, images, music and video—to create a new resource. The trick is to only use resources that can legally be matched together. Then, you'll need to be able to determine what options are available for licensing your new creation.

Each card represents a specific media type. In the bottom left of each card is a license mark that reveals its licensing status. These are Public Domain, CC BY, CC BY-SA, CC BY-NC-SA, GFDL, and Copyright (All Rights Reserved). Drag one of each media type to the docking area beneath the twelve cards and check to see if you have a legal remix. If you can't make a legal remix with the 12 cards available, click the **deal a new set** button. Once you have a set you think is compatible, check your answer and then select the options you have for licensing your remixed resource.

Use this game to practice as many times as you want. You will see the exact same game on the quiz for this lesson. To get full credit, you will need to succeed at creating legal remixes and choosing the correct licensing five times in a row.

License compatibility

PD cards and CC BY cards may be remixed with all others except (C) cards. CC BY-SA cards may only be remixed with PD, CC BY, and other CC BY-SA cards. CC BY-NC-SA cards may only be remixed with PD, CC BY, and other CC BY-NC-SA cards. GFDL cards may only be remixed with PD, CC BY, and other GFDL cards. (C) cards may not be remixed at all.

Play the game by going to:

<http://indstudy1.org/university/oer/>

Notes



Objective 1

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