The Common Information Environment and Creative Commons

Final Report to the Common Information Environment Members of a study on the applicability of Creative Commons Licences

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1 Executive Summary

The Common Information Environment (CIE) commissioned this study to investigate the potential for Creative Commons licences to clarify and simplify the process of making digital resources available for re-use. CIE members fund activities aimed at enriching the wealth of available digital resources and potential users need to easily assess whether or not they may use a discovered resource for their intended purpose, whilst adequately protecting the rights of the resource creators and providers.

During the study, workshops were held for key stakeholders in two groups - rights holders, primarily representatives of CIE organisations, and users of CIE produced digital resources, including the public, teachers at all levels of education, museum and library staff.

The workshops examined the types of resources, the ways they could be used, the possible licence conditions and their impact on the use and reuse of the resources. It was clear that there are many resources that CIE organisations might make available for open access, though there will always be some which are difficult to make available under any standard licence for reuse. This could be because the resources contain third party material which cannot be released widely, or because the organisation plans to commercially exploit the resource and considers open access would damage the market.

The study examined Creative Commons licences in detail but also surveyed alternative licences in use in the UK and around the world to consider the basis for their conditions of use. Among the licences considered were Click-Use (used by some public sector organisations), Creative Archive (produced by the BBC, Channel 4, The Open University and the British Film Institute), AEShareNET (used by the education sector in Australia), BC Commons (used by the education sector in British Columbia), and GNU (used by the Free Software Foundation).

There are many advantages to using Creative Commons including: ease of use; widespread adoption leading to familiarity; choices offering flexibility; human-readable, machine-readable and symbolic representations of the licences; sharing a common licence with many others; a direct link between the resource and its licence.

It was initially thought that the inability to restrict access to the UK when using Creative Commons licences would be a barrier to uptake. In addition, licence clauses concerning technical protection raised concerns since many CIE resources would be used in authenticated environments such as intranets, virtual learning environments and repositories. However, these issues were largely resolved during the study.

The study concluded that many resources produced by CIE organisations could be made available under a common licence and that Creative Commons would allow a substantial amount of CIE resources to be made available for reuse. Other existing common licences, such as Creative Archive and Click-Use could be used if Creative Commons cannot be applied but their use should be minimised to avoid removing many of the key benefits of the Creative Commons Licences.

The full list of recommendations from this study is shown on the next pages.

2 Recommendations

Recommendation (pg 25)**:** Each CIE organisation should make an active decision on whether it will adopt a policy for encouraging reuse of its resources

Recommendation (pg 25): CIE organisations adopting a policy for encouraging reuse should consider basing it on the following principles

1. Resources should be made available for reuse unless there is a justifiable reason why they should not.
2. The reuse of resources should be as unconstrained as possible. For example, resources should be made available for commercial reuse as well as non-commercial reuse wherever possible.
3. The range of permitted uses of resources should be as wide as possible, for example, including the right to modify the resource and produce derivative works from it.
4. Reuse should be encouraged by permitting others to redistribute resources on a world-wide basis.
5. Resources should be made directly available and discoverable electronically whenever possible.
6. The conditions of use for each resource should be linked directly to the resource so that they are reusable at the point of discovery.

Recommendation (pg 27): Creative Commons licences are suitable for the publication of many resources produced by public sector organisations, including those produced by organisations in the Common Information Environment, because the baseline conditions and choices can meet many situations. CIE Organisations adopting a policy of making resources available for reuse should use the following set of Creative Commons licences to meet their licensing principles unless there is a clear reason for not doing so:

- Attribution-only (BY) licence meets the most general conditions of principle 2
- Attribution-Non-commercial-Share-alike (BY-NC-SA) licence meets the more specific conditions of principle 3
- Attribution-Non-commercial-No-derivates (BY-NC-ND) licence can be used if modification is to be prevented

Recommendation (pg 30): CIE organisations that are publishing materials for reuse should use Creative Commons wherever possible but when resources cannot be licensed under Creative Commons the first choice should be another commonly used licence such as Creative Archive or Click-Use, in order to minimise the number of licences used. However some resources may exist under conditions which would not allow a standard licence to be used and these resources could be made available under a customised licence. Customised licences should be based on Creative Commons baseline rights as much as possible.

Recommendation (pg 32): CIE and other organisations should raise general awareness of the issues associated with licensing of resources for reuse through workshops and briefing papers.

Recommendation (pg 33): Pilot studies should be used by CIE organisations to investigate whether the administration involved in using Creative Commons (or other) licences for reuse would be cheaper than not using them (e.g. would the cost of checking resources and adding Creative Commons be less than the day-to-day costs of dealing with enquiries from the public about reuse of resources). Such studies could also be used to investigate issues such as risk management, users' benefits and value for money.

Recommendation (pg 34): In order to assist users of resources published under Creative Commons licences it would be useful for the CIE to create best-practice guides for aggregating and attributing resources. Such guides should contain examples of how to put materials together.

With regards to education of users, it needs to be recognised that different sectors have their own training cultures and that CIE bodies and other organisations could be used to influence those sectors. For example, specific training for teachers and other users about how to use materials published under Creative Commons could be offered through organisations like CILIP (Chartered Institute of Library and Information Professionals), SLIC (Scottish Library & Information Council) and HEA (The Higher Education Academy) and key staff such as school ICT teachers. Training for local authorities could be done through designated advocates within the local authority or through educational departments.

Recommendation (pg 34): If CIE organisations are publishing resources for reuse and they have concerns about practical uses that are not covered by the licences then they should attach extra information to the resource. Examples of such information could be.

- When the resource was created and how long the information is likely to be valid for.
- How they would like to be attributed
- Specific terms indicating that the creators are not endorsing any activity

Recommendation (pg 35): Public sector organisations which are not members of the Common Information Environment (CIE) should consider adopting these recommendations.

3 Background Information

3.1 Aims

This study has explored the applicability of Creative Commons[1] licences to public sector organisations in the United Kingdom. It has addressed the specific role that the deployment of Creative Commons, or equivalent, licences could play in encouraging and facilitating widespread use and re-use of digital content. The focus has been on content produced with public funds (or in an individual's own time), and made available online primarily for use in various not-for-profit ways, though the boundary between non-commercial and commercial exploitation has also been explored.

As a result of this study it has been possible to produce a set of recommendations covering:

- the types of licences which would encourage use and re-use of digital content

- the changes in work practice that would be required by organisations deploying these licences

In addition, this report includes a summary of

- the benefits to be gained by deploying these licences, both by the public sector organisations and the users of the digital content

- alternative licences which have been used elsewhere

3.2 The Common Information Environment

The Common Information Environment[2] (CIE) is a group of key public sector bodies in the UK, including Becta, the British Library, the Department for Education & Skills (DfES), the e-Science Core Programme, the Joint Information Systems Committee (JISC), the Museums Libraries & Archives Council (MLA), the National Archives, the National Electronic Library for Health, the Scottish Library & Information Council (SLIC), the BBC, Culture Online, English Heritage, The National Library of Scotland and UKOLN.

The Common Information Environment (CIE) is "*collaborative* work towards a culture in which existing and future organisations presume the need to be joined up - to be part of the digital aquifer of national interest information" (Miller, 2004). There are many aspects to this work and this study addresses the contribution that can be made by adopting a common licensing scheme.

Becta, the British Library, DfES, JISC and MLA commissioned this study, on behalf of the CIE, to investigate the potential for Creative Commons or equivalent licences to clarify and simplify the process of making electronic resources available for re-use.

3.3 Motivation

3.3.1 Access to information

In recent years there have been significant moves towards ensuring that material produced using public funds is made more widely available.

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[1] http://creativecommons.org/

[2] http://www.common-info.org.uk/

The Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002, entitle anyone to request information from a public authority which has functions in England, Wales, Northern Ireland[3] or Scotland. An applicant has the right:

- To be told whether or not the public authority holds that information; and if so,
- To have that information communicated to them.

The House of Commons Science and Technology Committee has made recommendations for open access to scientific research which is publicly funded: "It is not for either publishers or academics to decide who should, and who should not, be allowed to read scientific journal articles. We are encouraged by the growing interest in research findings shown by the public. It is in society's interest that public understanding of science should increase. Increased public access to research findings should be encouraged by publishers, academics and Government alike." (House of Commons Science and Technology Committee, 2004 – recommendation 11)

Already several organisations are taking important steps to make their digital content more available:

- The BBC has made live data[4] and open source software[5] available but their major initiative is the Creative Archive through which they have already released nearly 100 programme extracts to the UK public under the terms of the Creative Archive Licence (discussed further later in this report). The BBC material may be freely downloaded, mixed and used.

- The British Library is involved in several major digitisation programmes and digital developments described in the British Library's Strategy 2005-2008 "Redefining the Library" recognising that by 2010 it is anticipated that only 10% of UK research monographs will exist in print only form.

- The Museums Libraries and Archives Council's have funded 13 projects to make resources available to the Peoples Network Discovery Service[6]. The projects involve making content from a large number of sources available to the general public. Types of resources include: images, sound, maps and photographs and sources of materials include: public sector organisations, local authorities, national collections and the British Library.

- The NOF Digitisation of Learning Materials Programme[7] is the largest initiative of its kind in the UK. A total of £50M has supported 154 institutions in producing over a million images, tens of thousands of video and audio clips and many hundreds of learning packages as well as innumerable text pages.

The European Directive on the re-use of public sector information in 2003,[8] and its implementation in the UK (see section 3.3.4 for more details) provide a framework for the re-use of public sector information where an organisation decides to make

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[3] http:// www.dca.gov.uk/foi/

[4] http://backstage.bbc.co.uk/

[5] http://www.bbc.co.uk/opensource/

[6] http://www.peoplesnetwork.gov.uk/

[7] http://www.mla.gov.uk/action/pn/nof-digitise.asp

[8] Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information

information available. However, there is no obligation on these organisations to make documents available to the public.

From the point of view of users, digital content is rapidly becoming more accessible. The UK Office of Communications[9] has recently pointed out that 30% of households have broadband connectivity - more than dial-up. At the same time more than 60% of households now have digital TV and revenues from mobile telephones now exceeds that from fixed lines.

Although the main motivation is for publicly funded digital content to be made available to UK users there is also potential for wider access to have a significant impact in the developing world. As the House of Commons Science and Technology Committee (2004) pointed out "The digitisation of journals has the potential to greatly increase access to research findings for researchers in the developing world."

3.3.2 Re-use of information

Beyond access to these works however is the question of re-use. Copyright law consists of a bundle of exclusive rights for the owner of the copyright in a protected work. (See Appendix I for a discussion of ownership and in particular employee/employer issues in some sectors.) If someone carries out any of the restricted acts within the remit of the right holder without permission, copyright will be infringed. The exclusive rights do not, however, constitute a complete monopoly for the right holder. For instance, copyright will not be infringed if an insubstantial part of a work is copied, or if a substantial part of a work is copied for the purpose of non-commercial research and private study. However, the law is far from clear as to where the boundary between the rights reserved to the right holder and what can be used by someone without permission (the legal public domain) actually lies.[10] A licence granted by the copyright owner to a licensee will set out what that licensee may do with the permission of the right holder.

The licences discussed in this report refer to works for which copyright law will apply. They do not refer to works in which database rights may subsist. See Appendix J for a brief discussion of database rights and, in particular, the European Directive.

3.3.3 Re-use and licensing

Licences can thus play an important role in encouraging the use and reuse of digital material. Discovery of digital resources is becoming simpler, but it is rare that these discovered resources explicitly display the permitted uses to which their owners agree.

Thus, if use and reuse of digital resources is to be encouraged, it is essential to specifically state the conditions under which this may take place.

Licences can include statements concerning:

1. Permitted uses: For digital material uses fall into four main categories, rendering (display, print, play), distribution (copy, give, lend, sell), modify (excerpt, edit, aggregate) and utility (backup, save, install, delete). Each of which corresponds to or is encompassed within the exclusive rights of the copyright owner.

2. Constraints: Limitations on the use of resources may also be relevant, for instance by time, geographical area, types of user or types of use. There may also be requirements such as acknowledging the authors, displaying the licence or distributing only under specific terms.

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[9] http://www.ofcom.org.uk/media/news/2005/07/nr_20050713

[10] For a discussion on initiatives concerning 'Orphan Works' (defined in the US study as 'copyrighted works whose owners are difficult or even impossible to locate' see Appendix G.

Often a licence may be of such a length and complexity that users are discouraged from reading the terms and conditions. An important aspect of this study is therefore to consider how to simplify the process through reduction of effort and an increase in the awareness of licence conditions among users.

CIE and other public sector organisations wish to ensure that the resources they produce are used and reused as widely as possible. Many of these resources are useful for education, from primary schools to universities, for the public, through local history and similar interest groups, and will be of use to museum and library staff. By making resources available, and encouraging both reuse and redistribution, public sector organisations can encourage innovative and exploratory use of their material, much of which would not take place otherwise.

3.3.4 Government Policy and Public Sector Information

This study has taken place against a background in which the Government is already committed to making public sector information available, not just to access, but also for re-use.[11] One strand in this strategy has been the development, in 2001, of a Click-Use licence that enables a wide range of Crown copyright material and material produced by the Westminster Parliament to be re-used on defined terms (for more information see below).

A development in the regulatory framework came with the enactment of a European Directive on the re-use of public sector information in 2003,[12] the purpose of which is to encourage the re-use of public sector information. This Directive has been implemented in the UK in the Re-Use of Public Sector Information Regulations[13] which came into force in the UK on 1 July 2005. Whereas neither the Directive nor the Regulations require public sector organisations to make documents available to the public, if they do so it should be in line with the notions of transparency, fairness and consistency.

3.4 Click-Use[14]

The Click-Use Licence was introduced by the Office of Public Sector Information (OPSI), formerly known as Her Majesty's Stationery Office (HMSO), in April 2001. It is an on-line licence that enables a wide range of Crown copyright material (copyright material produced by UK government departments and agencies) to be re-used in a variety of ways. OPSI also launched on 12 August 2005 a version of the Click-Use Licence covering the re-use of material produced by the Westminster Parliament.

The Click-Use process requires the potential user to submit a request to OPSI for a licence. Once granted, the user may re-use an array of information under the one licence and in accordance with its terms. The Click-Use Licence is based on the assumption that the user already knows of and has access to the material that is to be re-used. This reflects the fact that government material may be available from many different sources. For example, the material may have been published in the form of a government report, or it may be unpublished material that is held by a government department and could be the subject of a freedom of information request. The aim is to establish links between the Click-Use Licence and asset lists so as to provide a seamless

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[11] See for discussion 'Realising the Value of Public Sector Information' Annual Report, Advisory Panel on Public Sector Information (APPSI) available at www.appsi.gov.uk/reports/annual-report.htm

[12] Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003

on the re-use of public sector information

[13] The Re-use of Public Sector Information Regulations 2005. S.I. 2005 No. 1515

[14] http://www.opsi.gov.uk/click-use/index.htm

link between knowing what is available and obtaining permission to re-use it. Direct access to the Government's Information Asset Register through *inforoute*[15] allows users to locate information resources, particularly those that are unpublished.

The licence covers use in commercial products and services as well as non-commercial use throughout the world. It also covers translation rights, use on intranet sites, and converting to other media. Click-Use licences are normally valid for five years. The licence permits the material to be reproduced and published in any medium but does not permit modification. The licence itself does not attach to the work which is to be re-used (unlike the other licences discussed in this report).

There are two versions of the Click-Use Licence: one covering information that is central or core to the process of government. Under this version of the Click-Use Licence there are no charges for re-use. Most Crown copyright material is made available under this model. The other version of the Click-Use Licence covers value added material produced by government. Under this version of the Click-Use Licence, the standard licence terms may be tailored to reflect specific circumstances and also provides the flexibility to charge for re-use.

Some Crown copyright is excluded from the Click-Use Licence models, notably material that is originated by government trading funds. Most government trading funds license the material they originate.

Over 7,500 licences Click-Use licences are currently in place. The Click-Use Licence is a key component in ensuring that the UK's obligations under the regulations on the re-use of public sector information are met.

3.4.1.1 Public Sector Information (PSI) coverage

The scope of the PSI Regulations is broad and includes Government departments (including government trading funds), devolved institutions including the Scottish Parliament, National Assembly for Wales and the Northern Ireland Assembly, documents held by most National Health Service bodies, local authorities and various non-departmental bodies, such as the Environment Agency. OPSI has produced a guide to the Regulations which contains an illustrative list of public sector bodies falling within its terms.[16]

However, not all public sector bodies, nor all public sector information, nor all public sector documents are covered by the system.

Exclusions include:

Public sector bodies:

- Public sector broadcasters and their subsidiaries and other bodies or fulfilling a public service broadcasting remit (including the BBC and Channel 4)

- Educational and research establishments such as schools, universities, archives, libraries and research facilities (such as research councils);

- Cultural establishments, including museums, libraries, archives, and performing arts establishments such as opera companies, theatres, ballet companies and orchestras.

Information:

- Information held by public sector archives if the archive exists, wholly or in part, for educational, research or cultural purposes.

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[15] http://www.opsi.gov.uk/iar/

[16] http://www.opsi.gov.uk/advice/psi-regulations/index.htm

Documents:

- Those that fall outside the scope of the public task of the public sector body.
- Those containing content in which the relevant intellectual property rights are owned or controlled by a third party.[17]

Thus there are three broad categories of works for which the Click-Use system can be used:

1. Works protected by crown copyright: the Click-Use licence system *must* be used
2. Works created by public sector organisations falling within the PSI Regulations: the Click-Use licence system *can* be used
3. Works created by public sector organisations falling outwith the PSI Regulations: the Click-Use licence system *can* be used.

Of these, Creative Commons Licences could be used with categories 2 and 3.

Whether a public sector organisation chooses to use the Click-Use licence system, a Creative Commons Licence, another system, or a combination of licensing systems will depend on the strategy pursued by that organisation.

3.5 Creative Commons

Creative Commons was founded in 2001 with the aim of offering a flexible range of protections and freedoms to authors and artists. It counters the "all rights reserved" tradition associated with copyright by introduction a set of licences that offer "some rights reserved". From its origins in the US, Creative Commons has become truly international with licences now offered in 21 jurisdictions (including 9 EU countries) with 14 more in preparation, and several others in prospect. In the UK, licences are available for England and Wales[18] and are in the final stages of preparation for Scotland[19].

Creative Commons offers not one, but several, licences enabling authors (or other rights holders) to select which rights they wish to reserve and which they wish to offer. All Creative Commons licences have a baseline set of features which are:

- Licensees are granted the right to copy, distribute, display, digitally perform and make verbatim copies of the work into another format.
- Licensees may incorporate the work into collective works (that is when the work, in its entirety in unmodified form, along with a number of other separate and independent works, is assembled into a collective whole)
- The licences have worldwide application that lasts for the entire duration of copyright and are irrevocable.
- Licensees cannot use technological protection measures to restrict access to the work.
- Copyright notices should not be removed from copies of the work,
- Every copy of the work should maintain a link to the licence
- The rights holder must be attributed.

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[17] For full details see the Advice and Guidance Note on the Regulations at http://www.opsi.gov.uk/advice/psi-regulations/index.htm

[18] http://creativecommons.org/worldwide/uk/

[19] http://creativecommons.org/worldwide/scotland/

- The work must not be subjected to any derogatory treatment as defined in the Copyright, Designs and Patents Act 1988 (England and Wales jurisdiction, and planned in Scottish version)

Beyond these baseline features it is possible to choose between several options:

- **Non-Commercial**: The work can be copied displayed and distributed by the public but only if these actions are for non-commercial purposes (see Appendix H for definitions of terms and Appendix D for a more detailed discussion of commercial and non-commercial use). *The alternative is not to select this option in which case all actions may be carried out for commercial purposes.*

- **No derivative works**: The licence grants baseline rights, but it does not allow derivative works to be created from the original. *The alternative is that the work may be modified to construct new derivative works.* Note that collective works are not considered derivative works.

- **Share-Alike**: Derivative works, based on the original, can be created and distributed, but only if they are published under the same licence. *The alternative is that a derivative work may be published under another Creative Commons licence.* Note that the "share-alike" option only applies when permission has been granted to created derivative works.

In all cases it is possible to seek permission from the rights holder to modify the licence conditions. For example, it would be possible to negotiate an agreement with a rights holder to commercially exploit a work which was originally licensed as non-commercial.

By exercising these choices a total of six licences are available under Creative Commons. These are defined under the abbreviations BY (attribution), NC (non-commercial), ND (no derivatives) and SA (sharealike). So the six licences are:

- **BY**[20] - Only attribution is required. The work may be used for commercial and non-commercial purposes, may be modified and the work or any new derivate works may be redistributed.

- **BY-NC**[21] - Attribution is required and the work must be used only for non-commercial purposes. The work may be modified and the work or any new derivate works may be redistributed.

- **BY-ND**[22] - Attribution is required and the work may not be modified and must be kept in its entirety. The work may be converted to another medium and may be used in collective works. It may be used for commercial or non-commercial purposes.

- **BY-SA**[23] - Attribution is required. The work may be used for commercial or non-commercial purposes and may be modified to produce derivate works. However, any derivative works may only be distributed under the same (BY-SA) licence.

- **BY-NC-ND**[24] - Attribution is required. The work may only be used, unmodified, in its entirety, and only for non-commercial purposes. The work may be used in a collective work and may be reproduced in another media format.

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[20] http://creativecommons.org/licenses/by/2.0/uk/, link to the human-readable version under England and Wales legal jurisdiction

[21] http://creativecommons.org/licenses/by-nc/2.0/uk/

[22] http://creativecommons.org/licenses/by-nd/2.0/uk/

[23] http://creativecommons.org/licenses/by-sa/2.0/uk/

- **BY-NC-SA**[25] - Attribution is required. The work may only be used for non-commercial purposes. The work may be modified and derivative works may be produced but they must only be distributed under the same (BY-NC-SA) licence.

Each licence is available in three forms: human-readable; lawyer-readable and machine-readable. The human readable form is described as the "common deed" and an example is shown in Figure 1. This form shows what is permitted and under what conditions. It also displays the Creative Commons icons which draw attention graphically to the conditions of use of works licensed under Creative Commons.

The lawyer-readable version of a Creative Commons licence is always linked to the Common Deed and is the full legal licence. These licences are usually quite short (typically three or four pages) and quite readable.

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[24] http://creativecommons.org/licenses/by-nc-nd/2.0/uk/

[25] http://creativecommons.org/licenses/by-nc-sa/2.0/uk/
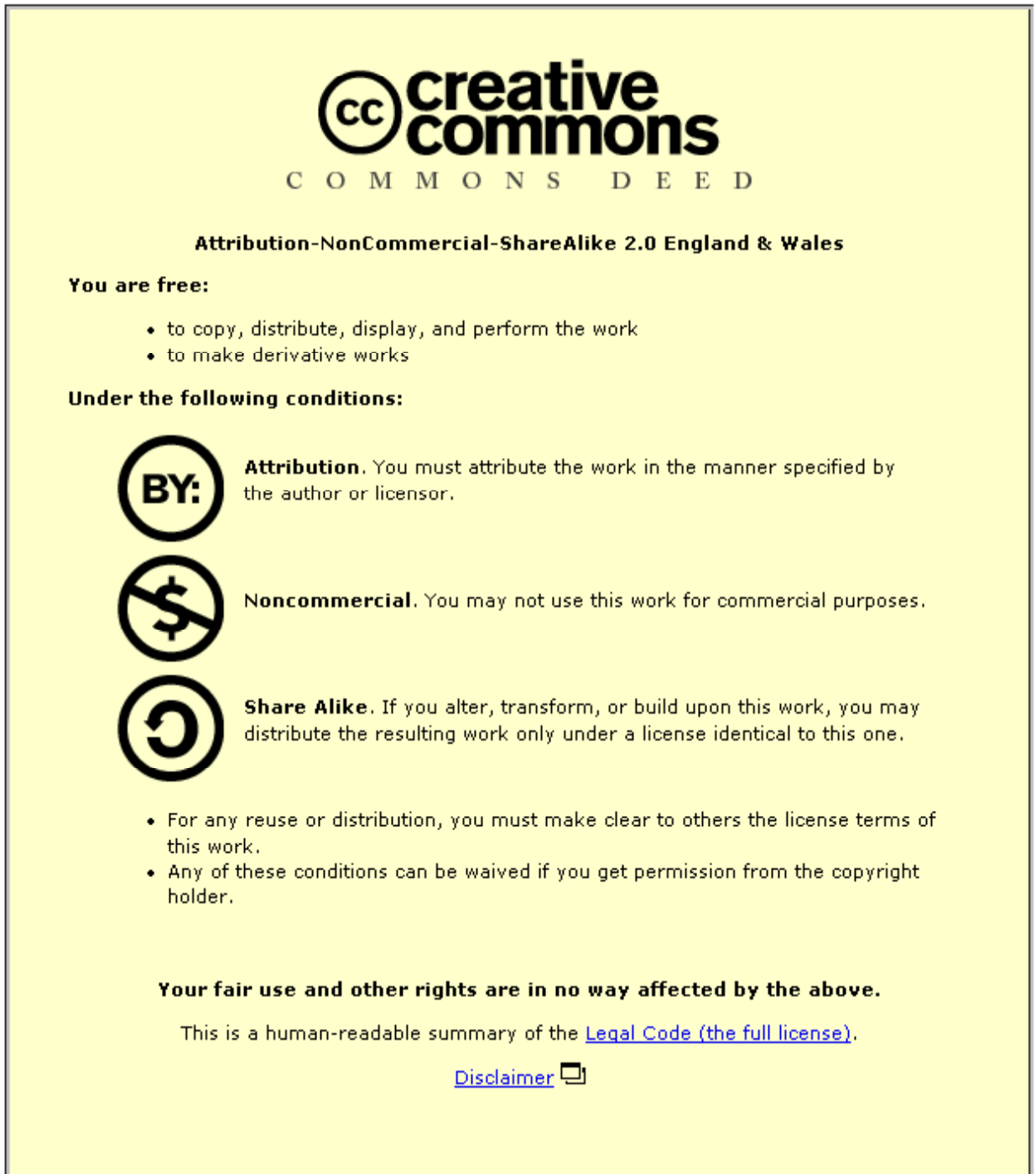
Figure 1. An example of a Creative Commons Common Deed - a "human readable" form of the licence (in this case the BY-NC-SA licence)

The machine readable form of the licence is a small section of code which is made available to cut and paste into web pages. When this code is placed in a web page it performs two main tasks – firstly, it displays a Creative Commons logo which is linked directly to the Common Deed of the appropriate licence and secondly, it includes a small section of RDF (Resource Description Framework) code which can be discovered by search engines to enable them to carry out specific searches for web pages licensed

under Creative Commons conditions. One example of such a search engine is Yahoo[26] which can carry out web searches using additional conditions such as:

- Find content I can use for commercial purposes
- Find content I can modify, adapt, or build upon

Recently the conditions of Creative Commons licences have been mapped onto ODRL (Open Digital Rights Language) which offers a more detailed machine-readable form of the conditions of the licence.[27]

3.6 Other Licences

Although Creative Commons licences are flexible there are other alternatives. Some of these have taken inspiration from Creative Commons while others pre-date most of the Creative Commons activity. In this section a brief summary of several alternatives is presented along with the reasoning behind their use. A more complete description of these alternatives is provided in Appendix C

3.6.1 AE ShareNet[28]

AEShareNet Limited (AESL) is a non-profit company (established by the Australian Ministers of Education and Training) which operates the *AEShareNet* system. This system was set up to streamline the licensing of intellectual property so that Australian learning materials are developed, shared and adapted efficiently.

AEShareNet offers "instant" licences and "mediated" licences. The instant licences are low-effort licences that require no transaction, similar to Creative Commons. Under instant licences four types are offered:

- **AEShareNet-FfE – *Free for Education*** May be freely used and copied for educational purposes only. May not be redistributed to the public.
- **AEShareNet-U – *Unlocked Content*** May be freely copied, adapted and used by anyone. Exact copies must retain the owner's copyright statement and the *AEShareNet-U* mark. Enhancements must not contain the owner's copyright statement and may have a new copyright statement by the Licensee.
- **AEShareNet-S – *Share and Return*** Material may be freely used, copied, adapted and distributed. Copyright in any enhancements is vested with the original owner. This is intended to encourage adaptation, whilst reducing fragmentation of ownership of different versions.
- **AEShareNet-P – *Preserve Integrity*** The material may be freely used, copied and distributed but only in its original form including the owner's copyright notice.

These "instant" licences are all perpetual licences with no geographical limitations.

The AEShareNet mediated licences are **AEShareNet C - Commercial Licence** and **AEShareNet E – End-user Licence.** In both cases these are negotiated licences involving fees. The main differences are that the commercial licence permits the licensee to distribute copies while the end-user licence does not.

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[26] http://search.yahoo.com/cc

[27] http://odrl.net/Profiles/CC/SPEC.html

[28] http://www.aesharenet.com.au/

3.6.2 Creative Archive[29]

The Creative Archive licence is used by the BBC to make available programmes from its archive. The Creative Archive Group also includes Channel 4, The Open University and the British Film Institute. Creative Commons licences were considered for use by the Creative Archive Group but rejected because two important requirements were not included. One requirement is that the Creative Archive licence is restricted to UK use only – whereas Creative Commons allows no geographical restriction. The other requirement is a "no endorsement or derogatory use" condition. While Creative Commons (England and Wales) includes no derogatory use (as defined in the Copyright Designs and Patents Act) it does not include no endorsement. The Creative Archive licence requires that the licensed content must not be used for promoting political, charitable, or other campaigning purposes.

The remaining conditions of the Creative Archive licence are essentially the same as the Creative Commons BY-NC-SA (attribution, non-commercial, share-alike) licence. Note that Creative Archive offers only a single licence not a choice as with Creative Commons and AEShareNet.

3.6.3 BC Commons[30]

The BC (British Columbia) Campus organisation in Canada offers two licensing options for BC public, post-secondary institutions developing online content (full degree programs, courses, virtual labs, learning objects, tools and technology). These licenses provide a mechanism for distribution, sharing, and reuse. Developers may choose either Creative Commons or BC Commons. BC Commons is a special Creative Commons derivative license BC Campus has itself created.

If developers choose Creative Commons then they use the Creative Commons Attribution Share-Alike (BY-SA) license and agree to share their online resources with the world. If they choose BC Commons then there is a single licence that functions like an Attribution Share-Alike license but constrains the sharing required to the BC public, post-secondary system. This provides for a more gradual cultural change for sharing that is community-based. Modifications to an original resource and creation of any derivative works must be shared back under the same licence.

BC Campus is implementing and supporting use of these licenses through its' annual $1.5 million Online Program Development Fund. Products of development created through this fund must choose either the Creative Commons or BC Commons licensing approach. All development assets will be housed in a resource repository and made directly available to BC educators for viewing, download and use. Repository technology has been selected via RFP and will be deployed fall of 2005.

Intellectual property and copyright of these online education resources is held by the original developers and can vary from institution to institution depending on policy. BC Campus is working with those institutional partners that use the BC Commons approach, to develop business opportunities and value propositions for commercial or strategic use of these assets outside of the BC public, post-secondary system. BC Campus is actively working to generalize the BC Commons licence to allow for use outside of BC by other community or special interest consortia.

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[29] http://creativearchive.bbc.co.uk/

[30] http://www.bccampus.ca/Page93.aspx

3.6.4 GNU Free Documentation Licence[31]

The GNU Free Documentation Licence (GFDL) is the licence used by the Free Software Foundation for material that is not software (e.g. manuals). GFDL is used, for example, by Wikipedia[32], the Free Encyclopaedia.

The GFDL allows copying, distribution and adaptation of a work for commercial or non-commercial purposes. The licence applies world-wide and has no limited duration. The main requirement is that the licence and copyright notice must be retained with the work and that no additional conditions may be applied. All derivative works must be licensed under the GFDL licence. In effect this is very similar to a Creative Commons BY-SA licence.

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[31] http://www.gnu.org/copyleft/fdl.html

[32] http://en.wikipedia.org/wiki/Main_Page

4 Analysis

4.1 Methodology

Requirements were principally gathered through three rights holders' workshops and a users' workshop. For a detailed analysis of the results from these workshops, please refer to Appendices A and B.

The aims of the rights holders' workshops were to obtain information from CIE and other public sector organisations about what types of resources they would be interested in making available for reuse by people outside their organisations and whether the types of uses which they would wish to permit were in accordance with the Creative Commons licences.

Information from the rights holders' workshops were gathered through group discussions and worksheets which were completed by the attendees. From these workshops, 48 examples of resources which could be made available for reuse were obtained. Of these, 28 were analysed in more detail, looking at what types of uses and constraints would be necessary and whether Creative Commons could be used.

The users' workshop was to determine in which ways potential users would make use of resources that rights holders may publish for reuse and to determine if Creative Commons would enable the utilisation of resources in a legitimate and efficient way.

Information was also gathered through worksheets and discussions. 16 worksheets containing 32 examples of resource types were analysed, looking at the types of actions users would like to perform on the resources. In addition, attendees returned forms detailing what they saw as being the advantages and disadvantage of Creative Commons and breakout groups were used to discuss a number of key questions concerning licences for reuse (Appendix B).

In total, 27 people attended the rights holders workshops and the following organisations were represented: Manchester University, York St Johns College, National Library of Scotland; Birmingham Museums and Art Gallery, Becta, JISC, West Midlands Regional Broadband Consortium[33], Centre for Digital Library Research, Newcastle Library, Office of Public Sector Information, UKOLN, National Archives, Scottish Library and Information Council, East Midlands Museums, Libraries & Archives Council, Joint Information Systems Committee, Libraries and Archives Copyright Alliance, JISC Legal Information Service, Culture Online. In total 20 people attended the users' workshop including representatives from the following sectors: schools, colleges, universities, libraries. The attendees at both these workshops are named in Appendix B and thanks are expressed to all for their significant contributions.

4.2 Resources

In many public sector organisations, and in particular those which make up the Common Information Environment, there is a wide spectrum of resources with different conditions affecting how easily they may be made available for reuse. One of the purposes of the workshops was to identify the types of resource which could be made available and the conditions which might restrict or expand the range of these resources.

During the rights holders' workshops, participants were asked to give examples of resources which their organisations would consider making available for reuse outside their organisations. From these workshops, 48 examples of resources were identified and the most frequently occurring resource types were learning materials, multimedia

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[33] www.wmnet.org.uk

resources, data sets, video/film, photographs, digital collections, advice sheets, reports, journals and metadata records.

Some resources which are produced by organisations which are covered by the OPSI (section 3.4.1.1) are required to use the Click Use Licence so they are not included in the following analysis. Resources which have contain information covered by the Data Protection Act could not be made available for reuse.

In addition resources that are out of copyright can not be published under a licence for reuse since there is no rights holder. However, many cultural institutions would argue that they have created a new resource by digitising it - so have the copyright. The argument is partly about control of access - and is similar to the 'copyright' in photographs of works of art (e.g. Constable's Haywain).

Case Study: Digitised Art Works

Description: Museums produce digitised versions of works of paintings in two formats. (low resolution and high resolution)

Licence for reuse: Creative Commons (BY-NC) is possible for the low resolution version but not for high resolution

Analysis: The low resolution version is for general public use but the high resolution resource is something that the museum would use to gain commercial revenue so they are unlikely to publish under Creative Commons

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4.3 Rights Holder's Concerns

From the rights holder's workshops, there was a strong awareness that freedom of information, social inclusion and open access movements will change the way in which resources are disseminated in the future (see section 3.1). In particular, public sector organisations will have to make more outputs available to be used in more ways by people outside their organisations.

However, public sector organisations are also under pressure to generate commercial revenue from their activities. This means that they would not want to publish resources in such a way that could damage their perceived market, so appropriate procedures for deciding what should be made available and under what conditions are necessary. The situation is also complicated by a requirement for public sector organisations to act in a non-discriminatory manner.

In addition, resources produced by the public sector may have parts which are owned by third parties, or they may act as custodians of material which is entirely owned by third parties. In the event of mistaken publication of these resources to a wider user group than the third party agreed to, it is clear that there would be a greater risk of potentially embarrassing and/or costly disputes or court cases. There are also situations in which third party material has been licensed to the public sector body for use in a particular sector, for a particular geographic region, or for a specified period of time. Accordingly, selection procedures for deciding which resources can be made available and rights clearance methodologies would have to be further developed for resources which already exists and contain third party material. On the other hand, for future commissions of third party material there would be a positive advantage from having a standards set of rights to be assigned by the third party.

There are also situations where identifying the rights holder of third party material is difficult, so-called "orphan works". For more details on orphan works see Appendix F.

There were also some concerns about potential damage to rights holders' reputation which could result from derogatory use of resources or activities which endorse an activity which the rights holder objects to. Associated with this concern about reputation were comments about ensuring that the most up-to-date versions of resources are used and that quality is maintained when resources are moved.

Most rights holders accept that users should be able to have all rendering rights (print and display) and that they should be allowed to carry out certain acts of modification such as aggregating and embedding the entire resource with other resources. Other modification actions such as annotating, extracting and making actual changes to pictures and texts received more divided answers. While some believed that such modifications were essential others did not. Views about modification depend, to some extent, on the type of resource. In particular images were felt to be a resource type which ought to be protected from modification. An element of choice enabling rights holders to make individual decisions about whether each resource should or should not be modifiable is indicated.

With regard to constraints on use it is clear that rights holders would expect to be attributed for producing resources and that they would like to be contacted if a user intends to make commercial gain from the resource. There were also a significant minority who considered technical protection and limiting the duration of use to be important. Restrictions based on geography and number of users were not considered to be so important, although there were some notable exceptions where existing resources are already licensed with geographic or sector restrictions.

Transport rights must be granted by rights holders if they are to be reused. From the workshops, the attitudes of rights holders seemed to be divided as many were not comfortable with users giving or lending the resources. However it was noted from the workshop discussions that many rights holders would be prepared to relax restrictions on use if certain conditions of use are adhered to. Further evidence of this is referred to in section 4.5 which explains how many of the rights holders were prepared to allow redistribution provided that certain conditions such as attribution and a restriction to non-commercial use are adhered to.

4.4 Users' Concerns

During the rights holders' workshops, the rights holders were asked to state who were the most likely end users of the resources which they are producing. Most rights holders anticipated that there were many different types of users, the most frequent responses being the general public (UK and overseas), education (HE, FE, ACL (Adult and Community Learning), schools, primary schools), museum and library staff. Commercial organisations were seldom mentioned. This information was used to inform invitations to the users' workshop which had representatives from HE, FE, schools, museums and library staff.

It was clear that users feel there is currently a lack of high quality digital materials available. It was thought that if public sector organisations were to make materials available under licences for reuse then there would be a wider range of resources which could be used. It was also shown in the CIE MORI report[34] that information produced by established public sector organisations such as museums, libraries and archives are likely to garner a high level of trust from the public.

General ease of use was one of the key themes from the workshop. In particular the users would have to be able to find a resource and use it in a straightforward manner.

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[34] http://www.common-info.org.uk/docs/mori-report.pdf

Associated with this is cost to the end user. In particular it has often been said that resources should be "free at the point of use" (See JORUM, 2004). There is also a requirement to ensure that administration is kept to a minimum.

Although there was a large variation in the types of resources which organisations would make available (see section 4.2) there was little evidence that resource type made much difference to the types of actions which users may wish to perform. Therefore, it is not necessary to consider different resource types separately.

During the workshops, it was clear that for effective use, the right to render (print and display) must be granted. As well as making practical use difficult, accessibility problems may arise if the right to print is not granted. Most users also view transport rights, to make copies and transfer them to other users, as necessary. This is backed up by a desire among users to allow other people from outside their own institution and outside the UK to use the resources that they are creating.

With regard to modification of resources it seems that while it would be useful to be able to make direct alterations to text or pictures, the resource could still be used if this were not possible. However being able to crop and annotate or aggregate the resource was considered to be very important.

Imposing time restrictions on resources would make use very difficult since it could cause major problems when combining time-limited resources with other materials. In particular for practical teaching it would be very difficult to have a resource for one year and then not have it the next year. The administration involved in renewing a licence is considerable.

Although most users considered imposing technical restrictions to be useful rather than essential, it seems that the majority of users would be using the resources in a technically protected, environment. From further discussion at the workshop it was agreed that most schools, colleges, universities and other organisations would use resources within authenticated environments such as intranets and VLEs.

Many people pointed out that commercialisation is becoming more important. For example, several people felt that schools are increasingly becoming commercial providers and revenue generation is more important so although users may not want to pay for resources, they may wish to use them for commercial purposes. In addition, commercial opportunities may arise in the future so intended use may change.

There was some confusion over practical issues concerning how to use resources. For example, is there a recommended way of aggregating several resources whilst maintaining attribution of each? Guidelines which explained any uses that would be breaking the licence agreement would be helpful. In addition, questions were asked about how to avoid quality degradation as resources are used downstream. This applied particularly to the use of images captured in ways that degrade the digital original (e.g. screen grab, use of a thumbnail, scanning).

4.5 Attitudes of Rights Holders to Publishing under Creative Commons

From the rights holder's workshops, 28 resources (mostly from CIE organisations) were analysed in depth and rights holders were asked to specify which Creative Commons licence, if any, they would be prepared, or able, to use. Figure 2 shows that the rights holder's representatives would allow redistribution of resources under certain conditions (in particular, attribution and non commercial use). However, 25% of the identified resources could not be made available under any Creative Commons licences.

For the resources which could not be made available under Creative Commons, some of the rights holders saw the resources as being sources of commercial revenue so they

would not be comfortable with resources being redistributed without their permission. The other major reason was to do with the resource containing third party materials which have been licensed for use under various terms and conditions. Such resources will often have a unique set of permitted uses and constraints which are unlikely to be met by a common licence.

Case Study: Digital learning resources

Description: Interactive learning resources which have been created by consultants and funded by the government for use in the Further Education sector

Licence: No Creative Commons licence is suitable

Analysis: The resources are only available for use within the UK Further Education Sector. There are no standard licences currently available which restrict use to one sector. The text from the Creative Commons licence could be modified to include these restrictions but this would be a new customised licence for which the name, symbols, human readable deeds and metadata from Creative Commons could not be used.

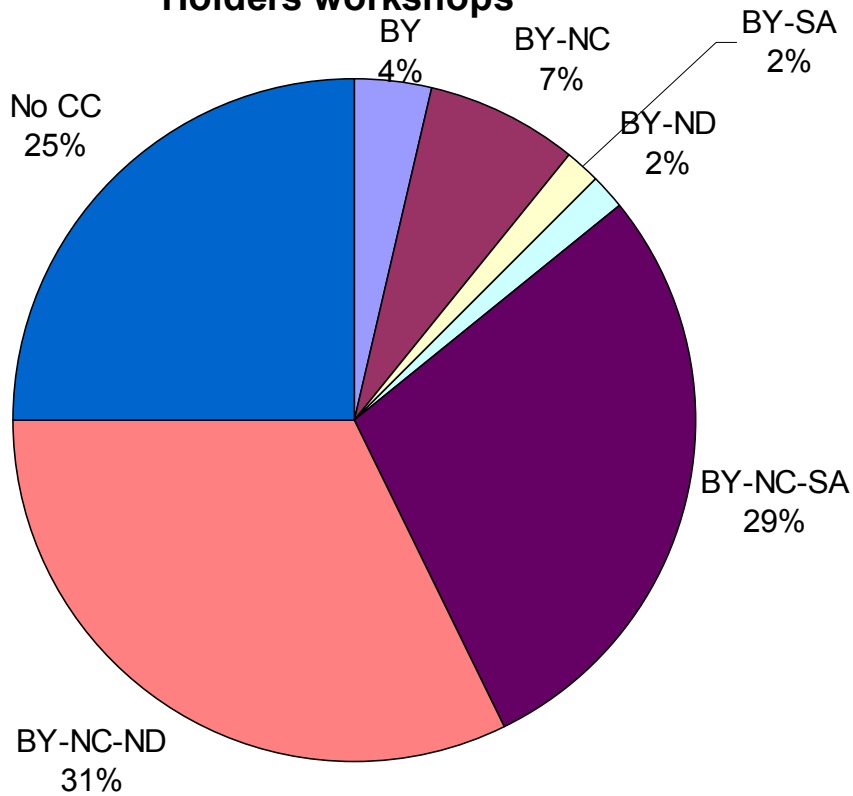**Licence choices for resources from Rights Holders workshops**

Figure 2: Frequency of licence choice for resources discussed during rights holder's workshops

For the 75% of resources which could be made available under Creative Commons, the two most popular licences were BY-NC-ND (attribution – non-commercial – no derivatives) and BY-NC-SA (attribution – non-commercial – share-alike) which are the most restrictive Creative Commons licence choices and are also the most commonly used licence choices for Creative Commons world wide[35]. Although users would like to have the potential to use the resources commercially, it seems that most rights holders are uncomfortable with their resources being used commercially.

It should be noted that this analysis is based on *types* of resource and not on *volume* of resources (which would require an extensive survey of all organisations and is outside the scope of this study). Also, the participants in our workshops are a limited set of representatives of public sector, and particularly CIE organisations.

Some understanding of the typical use of licences when a choice is available can be obtained by considering Creative Commons use across the globe. This is growing rapidly and it is interesting to note that comparing the latest figures (August 2005) with those from a survey in February 2005[36] reveals that the same two licences are by far the most commonly used and that BY-NC-SA has maintained its share at around 36% while BY-NC-ND share has decreased from 28% to 23% in six months with BY-SA growing by 5% in the same period. This implies that as Creative Commons becomes more established there is a willingness to use less restrictive licences.

4.6 Summary of Concerns

In order to make materials available for redistribution, rights holders will need to be satisfied that their resources will only be legitimately used under a specified set of conditions. For users to make effective use of these materials, they would ideally like to have few restrictions. This section examines the balance between users' and rights holders' requirements and suggestions are made about which licence features are essential and which are useful.

The rights holders and users have different aims and objectives although it was interesting to note that many of the users would also see themselves as publishers so many of their concerns were shared with rights holders.

In the following table the characteristic features which have been identified from the users' workshop as essential or useful are compared with what can be achieved using Creative Commons licences. A detailed discussion of the features for a common licence and their importance can be found in Appendix L.

Feature	Importance	Comment related to Creative Commons
Users need to be familiar with terms and conditions of licence	Essential	The choice of a single licence by many organisations will greatly increase familiarity. If that licence is also one that has widespread global use then familiarity will be further enhanced.
Users need to be able to use resources in a straightforward manner	Essential	By having the licence conditions attached to the resource the conditions of use are immediately clear. Since Creative Commons uses a human-readable "common deed" the text is short and easily understandable. The

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[35] http://technollama.blogspot.com/2005/08/54-million-creative-commons-pages.html

[36] http://creativecommons.org/weblog/entry/5293

		additional machine-readable capabilities of Creative Commons means that search engines can be used to identify resources meeting specific licence conditions.
Transfer		
Users need to be able to redistribute the resource in the UK	Essential	All Creative Commons licences permit redistribution. No geographical restriction to this redistribution is possible.
Users need to be able to redistribute resources worldwide	Useful	All Creative Commons licences apply to world-wide rights.
Render		
Users need to be able to print resource	Essential	All Creative Commons licences offer full rendering rights
Users need to be able to view resource	Essential	All Creative Commons licences offer full rendering rights
Modification		
Users need to be able to aggregate/Embed resource	Essential	All Creative Commons licences offer the right to create collective works
Rights Holders need to have a choice as to whether resource can be modified	Essential	Creative Commons licences are available to permit modification or to require "no derivatives", preventing modification
Rights holders need to have a choice about whether extracts of a resource can be embedded or annotated	Essential	Extracts will be prohibited under Creative Commons "no derivatives" licences but permitted under other Creative Commons licences.
Restrictions		
There should be no time restriction on use	Essential	All Creative Commons licences apply for the full period of copyright and are irrevocable.
Users should not use the resource commercially	Essential	Creative Commons licences which specify that only non-commercial uses are allowed may be used. These allow commercial use only by agreement with the rights holder. There are also Creative Commons licences which will permit commercial use if desired.
The rights holder should be attributed.	Essential	All Creative Commons licences (since version 2.0) require attribution.
There should be no restriction on number of	Essential	Creative Commons licences have no restrictions on number of users

users		restrictions on number of users
There should be no restriction on using password protected systems such as VLES and intranets	Essential	It is not clear if Creative Commons licences would allow resource use in protected environments (see Appendix E)
The resource should not be used to suggest that the rights holder is endorsing an activity	Useful	Creative Commons licences do not currently include a "no endorsement" clause but this is under consideration.
The resource should not be used in a derogatory manner	Useful	The UK (England and Wales and Scotland) Creative Commons licences require no derogatory use of resources in line with the Copyright Designs and Patents Act.
Rights holders should have a choice about whether to allow UK or world use	Useful	It is not possible under Creative Commons to restrict use to a particular geographical region.

Many of the factors considered essential by both those at the users' workshop (which also included rights holders) are included in the baseline rights in Creative Commons licences and therefore appear in every Creative Commons licence. These include full rendering rights, redistribution rights (excluding commercial redistribution), the requirement for attribution of the author/rights holder, and no time limit on the licence. In addition resources may be combined with others in collective works.

Creative Commons also offers options which are considered essential by rights holders enabling a choice to be made between modification and none (no derivatives) and between commercial and non-commercial use.

Creative Commons does not permit restriction by geographical region so it is not possible to restrict use to the UK. Note that this was one of the main reasons the Creative Archive licence was created and is also behind the use of the BC Commons licence in parallel with Creative Commons in British Columbia.

5   Discussion

In this section the results of the analysis and research are discussed and specific recommendations are made.

As discussed in earlier sections, the purpose of licensing resources is to make them available under a specified set of permitted uses and constraints. On one hand, this could be achieved by designing a specific licence for every resource. The licence would exactly match the conditions of use but it would be administratively expensive and unappealing to users who would be faced with a plethora of different licences. On the other hand, a single licence would appeal to users and would be administratively simple but it would be very difficult, or impossible, to fit the conditions of use of many different resources to a single licence.

The alternative, which is discussed in detail below, is to adopt a limited number of licences that maximise the number of resources that can be licensed, whilst not being over restrictive on use. This approach will never suit every resource and so some will still need to be licensed under other licences. If a limited number of licences are to be used then substantial benefits are gained if many organisations can agree on the same choice of licences.

It is clear that no single solution will solve all CIE organisations licence needs. What is required is a balance that allows as many resources as possible to be licensed for reuse under a common licence, thus minimising effort and maximising the benefits associated with a common licence, while specific licences can still be negotiated when they cannot fit the common licence, usually as a result of the funding or sourcing of the resources.

5.1   Licence Policy

The motivation for public sector organisations to make resources available for reuse is enormous and driven by legislative, cultural and economic forces. Difficult decisions will be required when considering specific licensing conditions so it is advisable to be able to base such decisions on a sound and principled basis.

There was evidence of a strong motivation from many of the CIE organisations to make their resources more available for reuse. In order to achieve this it would be necessary for the organisations to have a clear policy that is disseminated throughout the organisation. This policy would have to be formed based on the organisations remit and strategy and would need to consider factors such as the benefits to the organisation and users (see section 5.2.3) and the required changes to organisational practice (see section 5.4)

Recommendation: Each CIE organisation should make an active decision on whether it will adopt a policy for encouraging reuse of its resources.

Recommendation: CIE organisations adopting a policy for encouraging reuse should consider basing it on the following principles

1. Resources should be made available for reuse unless there is a justifiable reason why they should not.

2. The reuse of resources should be as unconstrained as possible. For example, resources should be made available for commercial reuse as well as non-commercial reuse wherever possible.

3. The range of permitted uses of resources should be as wide as possible, for example, including the right to modify the resource and produce derivative works from it.

> 4. Reuse should be encouraged by permitting others to redistribute resources on a world-wide basis.
>
> 5. Resources should be made directly available and discoverable electronically whenever possible.
>
> 6. The conditions of use for each resource should be linked directly to the resource so that they are reusable at the point of discovery.

These principles are discussed in more detail in Appendix K which also includes arguments in support of each principle.

5.2 Creative Commons

The purpose of this study was to *explore issues related to the deployment of Creative Commons or equivalent licences as a means to encourage and facilitate widespread use and re-use of digital content.*[37] In order to make best use of the time available, the approach taken was to identify the needs of the CIE organisations and the potential users of their digital content, to examine Creative Commons as a possible licensing solution and, if Creative Commons is inappropriate, to examine other licence options, particularly those that already exist.

It was always recognised that no single licensing solution will satisfy every resource from every public sector organisation, or even every CIE organisation, so a balance was sought between minimising the complexity of the solution (primarily the number of different licences) and maximising the volume of resources which could use the solution. Possible solutions include:-

- A single licence would provide the simplest solution but is less likely to meet the needs of the users and rights holders than a set of licences. For example if it is very restrictive then many resources may be published using it but the terms and conditions may mean that they are not useful to the user.

- A set of licences with common baseline conditions would be simpler than a set of completely different licences.

- A set of common-baseline licences that are already in use would be simpler than adding to the existing licences in use.

These arguments lend weight to Creative Commons as a solution but particularly to using only a subset of Creative Commons licences.

5.2.1 In Favour

The factor which most clearly divided rights holders in selecting a licence is their willingness to allow derivate works. If only one licence existed, which either permitted or excluded derivative works, then a substantial group of resources would not be licensable. It is very clear that a choice of at least two licences, permitting and excluding derivative works, is required.

While the vast majority of resources would be likely to be available only for non-commercial re-use a licence permitting some commercial reuse would be used by some.

The areas in which there was general agreement in favour of Creative Commons are:-

- The movement is expanding rapidly and there is an increasing awareness among the public of the concepts and features of Creative Commons (see section5.3).

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[37] Invitation to tender: terms of reference.

- The concept of including a link to a licence in a resource and having no form of registration means that administration is kept to a minimum
- Symbols and "human readable deeds" (see section 3.5) are associated with the licences and increase awareness of terms and conditions
- Resources published under Creative Commons on the internet are searchable through the metadata schema which has been developed

From section 4.6, it is clear that many of the terms and conditions of Creative Commons licences are in line with what the organisations and users in this study require. Specific advantages include:

- Limited administration for both users and rights holders
- Providing resources to users which are free and useable at the point of discovery
- The idea of allowing users to legitimately reuse and redistribute resources provided they abide by certain terms and conditions is a requirement of the organisations and is satisfied by Creative Commons
- Rights holders retain the right to attribution and to prevent commercial use but have the flexibility to choose if they would prefer a no derivative or share-alike options

Recommendation: Creative Commons licences are suitable for the publication of many resources produced by public sector organisations, including those produced by organisations in the Common Information Environment, because the baseline conditions and choices can meet many situations. CIE Organisations adopting a policy of making resources available for reuse should use the following set of Creative Commons licences to meet their licensing principles unless there is a clear reason for not doing so:

- Attribution-only (BY) licence meets the most general conditions of principle 2
- The Attribution-Non-commercial-Share-alike (BY-NC-SA) licence meets the conditions of principle 3
- The Attribution-Non-commercial-No-derivates (BY-NC-ND) licence can be used if modification is to be prevented

Case Study: Digital images of Victorian glassware designs

Description: Glassware designs from the 1850-1910 Board of Trade Registers and Designs and Patents.

Licence: Creative Commons (BY-NC-SA) is possible.

Analysis: There are few third parties who would be concerned about the image being modified and contributors would like to encourage sharing and reuse. Hence a share-alike licence is preferred.

> **Case Study:** Censorship in World War II
>
> **Description**: Images of newspaper articles and original archives with accompanying teaching notes
>
> **Licence:** Creative Commons (BY-NC-ND) is possible.
>
> **Analysis:** Images and paragraphs of text can be incorporated into other pieces of work but the resource cannot be modified in order to ensure integrity.

5.2.2 Against

There are a number of areas in which questions about the suitability of Creative Commons were raised:

- Geographic restrictions
- Sector restrictions
- Third party material (including limited duration)
- No endorsement clause
- Technical protection measures

These are now considered in more detail

5.2.2.1   Geographic restrictions

The question arose during workshop discussion of whether public sector organisation's resources should be made available world-wide or restricted to the UK and also within the UK (e.g. Scotland only if funded by the devolved Executive). While a first reaction was that the UK should benefit there was also a recognition that if resources were unrestricted then other countries could adopt the same approach and many more resources would be available. The view of most rights holders, as well as potential users, was that resources should be made available world-wide whenever possible.

However, there is a real possibility that some organisations may not wish to, or be able to, offer world-wide reuse. In Canada, the BC Commons licence model was adopted for exactly this reason. The BC-only licence allows resources to be shared with a more closed community (in their case only the education sector in British Columbia) for those not yet ready to share world-wide.

One approach would be to develop a UK-only licence based on Creative Commons principles which could be offered in addition to the Creative Commons licences. A better approach would be to use the Creative Archive licence which is restricted to the UK but is otherwise very similar to the Creative Commons BY-NC-SA (attribution, non-commercial, share-alike). Neither of these options offers a solution if the geographic restriction is to a region of the UK. Geographically restricted licences would also hinder aggregation of resources (see section 5.4.3 for further details) under different licences since a composite work containing both a Creative Commons (BY-NC-SA) licensed work and a Creative Archive licensed work could not be licensed under either, although this is a condition of both licences.

If applied to new works, the greatest benefit would accrue from removing the geographic restriction. If it cannot be removed then a Creative Archive licence should be used when the restriction is for the UK. For restrictions to specific UK regions a customised licence would need to be produced, recognising that each new licence makes re-use in composite or derivative works less possible.

If applied to existing resources, see section 5.2.2.3.

5.2.2.2 Sector restrictions

In some cases there may be restrictions to specific sectors (e.g. Further Education, publicly-funded primary schools). Many different potential restrictions are conceivable and it is therefore not possible to make recommendations about a common licence. Each licence would need to be written for the specific circumstances.

5.2.2.3 Third party material (including limited duration)

Some CIE organisations manage third party resources or commission resources which may include third party resources. Where licence conditions for these resources already exist it is unlikely that the licences could be re-negotiated to align the conditions with Creative Commons or any other licensing scheme. For newly acquired resources it may be possible to arrange for the third party material to be licensed under Creative Commons conditions. This should be the first choice.

In the event that this is not possible because of specific conditions of a bequest or because of negotiations with third parties which result in material being far cheaper if the third party retains certain rights such as limiting of duration of use then specific licences will be necessary.

5.2.2.4 No endorsement clause

There is no clause in the Creative Commons licence at present to deal with "no endorsement", to prevent reuse for promoting political, charitable, or other campaigning purposes. It is understood that such a clause is under consideration by the Creative Commons organisation. If such a clause is a high priority then the Creative Archive licence should be used until Creative Commons includes a no endorsement provisions.

5.2.2.5 Technical Protection Measures

During the workshops, questions were raised about whether resources made available under Creative Commons licences could be used in authenticated environments such as intranets, virtual learning environments and repositories, since Creative Commons licences forbid technical protection measures on the licensed works.

A detailed investigation (see Appendix E for more discussion) suggests that as long as the authenticated environment is not being used as a means of restricting the Creative Commons licence then works licensed under Creative Commons can be used within these environments. A key element is that Creative Commons licences permit the work to be redistributed. As long as a work in an authenticated environment may be distributed according to its Creative Commons licence, then the environment is not restricting the licence. Note however that if the conditions of use of an intranet state that nothing in the intranet may be redistributed outside the intranet, then that would act to restrict the licence. One way to avoid this would for the intranet rules to exempt works with Creative Commons licences.

This interpretation has been confirmed by the Creative Commons organisation.

This is not a barrier to using Creative Commons licences.

5.2.2.6 Summary

The recommendation to use Creative Commons licences will exclude some resources as a result of the conditions discussed above. There is no single alternative which would make many more resources available. In addition, based on the rights holders workshops, if a new licensing scheme (say a British Commons Licence) were to be created with further restrictions, it is unlikely that a significant number of resources could be made available under the more restrictive licence than with Creative Commons.

The Creative Archive licence could be used to supplement Creative Commons licences in some cases, where restriction to the UK or "no endorsement" is important, while in most other cases specific licence conditions will be required for each project/programme.

However it should be noted that Creative Commons offers many benefits and the disadvantages of offering many alternatives are:

- The process of developing a new licensing scheme is both time-consuming and costly

- A proliferation of licence types causes confusion for users and will act as a barrier to acceptance. By using a licensing scheme that is already widely used[38] familiarity will encourage use.

- When resources from different sources are aggregated to produce collective or derivative works, problems of licensing the new work are reduced if the component works share licence conditions

- If a new licence is created based on Creative Commons then trademarks, symbols, human readable deeds and metadata associated with Creative Commons can not be used.

It should be noted that Creative Commons licences are themselves made available under the Creative Commons licence and derivative licences can be created based on the Creative Commons licences. This offers a useful option when creating custom licences which can adopt as many Creative Commons conditions as possible and change only those parts which require different conditions. Although the licences themselves may be used in this way the name "Creative Commons" and the symbols are trademarked and may not be used unless they refer to true Creative Commons licences.

> **Recommendation:** CIE organisations that are publishing materials for reuse should use Creative Commons wherever possible but when resources cannot be licensed under Creative Commons the first choice should be another commonly used licence such as Creative Archive or Click-Use, in order to minimise the number of licences used. However some resources may exist under conditions which would not allow a standard licence to be used and these resources could be made available under a customised licence. Customised licences should be based on Creative Commons baseline rights as much as possible.

5.2.3 Benefits

If a licence policy based on the principles outlined in section 5.1 and the recommended Creative Commons licences is adopted then the following benefits should be realised.

For all

- Maximising the use and reuse of resources primarily funded by UK tax payers.
- Promoting a culture of openness and freedom of information

For public sector organisations

- Consistent and transparent treatment of digital resources
- Improved perception of "value for money"
- Reduction in effort of dealing with enquiries for information/resources
- Reduction in effort of developing a reuse policy by sharing a common policy
- Reduction in legal input required through adoption of existing licences rather than drafting new and varied licences in each organisation/group/project

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[38] more than 14 million resources are already linked to Creative Commons licences world-wide while 31,000 resources have been linked to the England and Wales versions of the Creative Commons licences in the five months since they were made available in April 2005. Figures based on Yahoo linkback statistics.

- Enhanced PR, potentially leading to increased use of other services
- Choice of licences offers flexibility
- A framework for rights clearance conditions in future projects

For users of public sector resources

- Wider access to previously unavailable digital resources
- Clear, unambiguous and permissive conditions of use
- Re-usable at the point of discovery
- Reduced confusion through common set of well-recognised licences and symbols
- Peace of mind through knowing that reuse is legal and encouraged
- Ability to redistribute and make derivative works (in permitted cases)
- Search engines can offer searches based on conditions of use

5.3 Confidence in Creative Commons Organisation

Creative Commons is a non-profit Massachusetts corporation led by a board of directors; the corporation has 13 full time staff and is helped by a large number of interns and volunteers around the world. The organisation is funded by public donations, and current donors include the Center for the Public Domain, the MacArthur Foundation and the Hewlett Foundation. (More details are provided in Appendix G.)

Although relatively recent, the Creative Commons movement has been gathering momentum and between February and August 2005, the number of online works increased from 10 million to 54 million. In addition the organisation has grown from being an American organisation to include other countries and at the time of writing, 21 countries had full licences, and 14 projects were involved in draft licences.

An increasing number of organisations are choosing to use Creative Commons including: Massachusetts Institute of Technology (MIT), Public Library of Science, South African Ministry of Education, the Brazilian Ministry of Culture, the Forum of the Future, the Internet Archive and Open Source Textbook Project amongst others. It seems likely that this adoption of Creative Commons will continue to increase and that organisations can be confident that the website and licences will be maintained for the foreseeable future.[39]

5.4 Implementation Issues

5.4.1 Organisational Policy

If organisations are to adopt Creative Commons as a common licensing basis for making digital resources available for widespread reuse then a number of implementation issues need to be considered. These are discussed in this section with an emphasis on recommended actions. Most of the issues covered here would also need to be considered if a licensing scheme other than Creative Commons was to be adopted.

Section 1.2 explains many of the motivations which public sector organisations have for making resources more available to the public such as the freedom of information and open access movements. Making resources more openly available would also allow the individual organisations to effectively advertise their expertise and would also attract feedback from others which could be used to improve quality (Jackson,2005, pg 11).

Many rights holders have stated that the pressure for gaining commercial revenue is a major barrier to making resources available and there is much debate in the sector about whether making resources available under Creative Commons - Non Commercial licences would decrease the potential for commercial exploitation.

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[39] For further information about the strength of Creative Commons, refer to appendix G

There are some examples in which materials that are expected to generate commercial gain are published under licences which allow redistribution (e.g. Prelinger Archives[40], Corey Doctorow book[41]). Nevertheless, it is unlikely that the public sector organisations represented at the workshops would allow materials, which they expect to generate commercial revenue, to be made available under Creative Commons.

Organisations adopting Creative Commons need to consider what categories of resources they can make available under Creative Commons. These fall into three main categories:

- Existing resources: Where resources do not involve rights clearance with third parties it is relatively easy to decide to make existing resources available. If the resources need to go through a rights clearance process then Creative Commons conditions are an excellent basis on which to request clearance from the rights holders. However, each organisation will need to consider the cost of retrospectively reapplying rights clearance. (See for example (Donald, Longmuir, Lobban, 2005). A further option, where appropriate, is to remove third party material before licensing the resource.

Case Study: Audio interviews from radio programs

Description: Taped recordings of radio interviews including politicians, actors and poets are to be made available for wider reuse

Licence: Creative Commons (BY-NC-ND) is possible.

Analysis: In order to make the resources available for reuse, it would be necessary to clear rights on the basis that the resources will be published under CC. Rights holders should be made fully aware of the implications.

- Future internal resources: Creative Commons licences can be adopted for all future resources as a matter of organisational or government policy. If a policy can be established that all resources should be made openly available then the only issue is which Creative Licences to use.

- Future commissioned/project works: When organisations have new works created, either through funded projects or through commissions, it is convenient to use Creative Commons licence conditions as the basis on which the rights will be granted as part of the funding agreement. This offers long-term assurance since the rights apply globally and are not time-limited.

Recommendation: CIE and other organisations should raise general awareness of the issues associated with licensing of resources for reuse through workshops and briefing papers.

A commonly used method for reducing the potential damage which could result from complaints by third parties is to have a notice and take down procedure in place. See for example MIT OpenCourseware Terms of Use[42]. However, when a resource is published under a Creative Commons licence, then anyone who has a copy of that resource will be permitted to redistribute the resource to anyone else, so even if the resource is taken down from the original site it may still be distributed. This means that Notice and Takedown procedures will be less effective for materials published under Creative Commons, or any other licence that permits redistribution, than for materials which have all rights reserved.

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[40] http://www.archive.org/details/prelinger

[41] http://www.craphound.com/

[42] http://ocw.mit.edu/OcwWeb/Global/terms-of-use.htm

Clearly if more materials are being made available for reuse, there is greater risk of the resource being misused (intentionally or unintentionally) by end users. The principal concerns of rights holders appear to be related to derogatory use, endorsement, and commercial use. When using the Creative Commons England and Wales Licence, and the Creative Commons Scotland Licence, derogatory use is explicitly excluded. Choosing the "No Derivatives" option will also offer some protection to the integrity of the resource and the "Non-Commercial" option offers protection against commercial use.

However, from the workshops, the general message was that large scale policing of user's activities is impractical and that organisations allowing their resources to be reused will have to accept that there will be some misuse. The management of this risk will need to be taken into consideration when developing policies for reuse

Administrative processes associated with making resources available to those outside the organisation will be affected by a policy decision to make resources available under Creative Commons. It may be necessary to make changes to the current administration procedure. In particular there are likely to be added costs from having to adopt a selection procedure to decide whether materials should be made available, whether they have commercial potential, whether the resource contains third party materials, and which Creative Commons licence to use.

Additional costs would also be associated with clearing rights for using third party materials, particularly if the policy is being applied retrospectively. However, under current practices if a resource is to be made available, then there would also be a cost involved in allowing this. It may also be more awkward to contact original resource authors at this point.

Each CIE organisation will differ considerably in the number of requests they get for information. There are also variations in the administration methods being used so the costs involved in adopting a policy for reuse will have to be considered separately for different organisations. However pilot studies could give useful indications of costs involved.

> **Recommendation:** Pilot studies should be used by CIE organisations to investigate whether the administration involved in using Creative Commons (or other) licences for reuse would be cheaper than not using them (e.g. would the cost of checking resources and adding Creative Commons be less than the day-to-day costs of dealing with enquiries from the public about reuse of resources). Such studies could also be used to investigate issues such as risk management, users' benefits and value for money

5.4.2 Definitions of terms

There have been several questions about some of the terminology used in the Creative Commons Licences, in particular the terms "commercial use" and "derivative". While Appendix H gives definitions of these and other terms it should be noted that there will be "grey" areas and that organisations should contact their legal teams if they have doubts. However, since Creative Commons, and most other licences for reuse, are fairly new there is a lack of court cases involving them so it may not be possible to obtain definite answers.

5.4.3 Practical Aspects of Use

The creation of composite or derivative works is one of the common re-uses expected of CIE resources. Incompatibility of licence conditions can occur when multiple resources with different licences are aggregated. Suppose that a picture has been produced by organisation A under a CC- Attribution-Non Commercial-No derivative licence and that a report has been produced by organisation B under an Attribution-Non Commercial-Share Alike licence. What would happen if organisation C wished to add some more text to the

report produced by organisation B and incorporate the picture produced by organisation A.

If Organisation C were to republish the resource then it would be necessary to make it clear that the picture is provided under the BY-NC-ND conditions and that the text is available under BY-NC-SA conditions, however in practical situations it may be tricky to produce materials in this way. If there were other (Non-Creative Commons licences) for reuse involved then the aggregation could become more complicated.

Related to this is a question about attribution of resources. If these resources are aggregated together then it is not obvious how best to attribute the contributions from Organisations A, B and C. This problem will become more difficult if there are a larger number of resources being combined together and if there are further actions such as taking excerpts and adding more resources. In addition, there are a number of different methods of attribution possible. One way of simplifying the process could be to link via a URL to some XML which contains the attribution which the institution needs.

Another practical issue is related to how a resource's quality and integrity is maintained as it is transferred downstream. In particular, both rights holders and users were concerned about quality degradation in a resource as it is copied and transferred between users. Related to this are concerns about people using resources which are out of date.

There are also issues about resources being used in a derogatory manner or to endorse an action which the rights holder may not agree with. Derogatory use is explicitly excluded in the Creative Commons England and Wales, and the Creative Commons Scotland licences. With regard to concerns about non endorsement, it would be possible to publish a resource using a Creative Commons licence together with an additional statement in order to provide some protection.

In conclusion it was thought by many at the users' workshop that in practice people involved in teaching and learning would be creating resources without thinking too much about intellectual property issues and that there will be infringements whether resources are available with all rights reserved, under Creative Commons or under any other form of licence for redistribution.

Recommendation: In order to assist users of resources published under Creative Commons licences it would be useful for the CIE to create best-practice guides for aggregating and attributing resources. Such guides should contain examples of how to put materials together.

With regards to education of users, it needs to be recognised that different sectors have their own training cultures and that CIE bodies and other organisations could be used to influence those sectors. For example, specific training for teachers and other users about how to use materials published under Creative Commons could be offered through organisations like CILIP (Chartered Institute of Library and Information Professionals), SLIC (Scottish Library & Information Council) and HEA (The Higher Education Academy) and key staff such as school ICT teachers. Training for local authorities could be done through designated advocates within the local authority or through educational departments.

Recommendation: If CIE organisations are publishing resources for reuse and they have concerns about the practical use that are not covered by the licences then they should attach extra information to the resource. Examples of such information could be.

- When the resource was created and how long the information is likely to be valid for.

- How they would like to be attributed

- Specific terms indicating that the creators are not endorsing any activity

Recommendation: Public Sector organisations which are not members of the Common Information Environment (CIE) should consider adopting these recommendations.

6 Appendices

The appendices to this report are provided as a separate document

Appendix A	Rights holders' workshop
Appendix B	Users' workshop
Appendix C	Licences for reuse
Appendix D	Non commercial use
Appendix E	Technical protection
Appendix F	Orphan works
Appendix G	Strength of the Creative Commons organisation
Appendix H	Definitions
Appendix I	Ownership
Appendix J	Databases
Appendix K	Licensing principles for reuse
Appendix L	Features of a common licence for CIE organisations
Appendix M	Acknowledgements

7 References

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