CC and Open Access

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First of all:

I am not going to talk about **WHY we should have Open Access publishing** but will look at the legal aspect of **HOW we do it**..
This said, I am very much an advocate for Open Access as I believe it is essential for creating an access-enabling environment, particularly in the educational field, that facilitates teaching and learning for the benefit of society at large.
I therefore congratulate UP for being the **first** university in Africa to adopt a **mandate for** open access deposit of publications.
The University of Pretoria supports free open access to the research literature for all researchers worldwide and takes responsibility for the dissemination of its own research outputs.

**Research papers**

In February 2009 Senate and the Executive of the University of Pretoria adopted a policy for the mandatory submission of research papers authored by UP staff and students. The complete text of the policy is available on the UP Intranet at http://www.up.ac.za/intranet/registry/2009-09-22a_Open%20access%20to%20research%20papers.pdf

**Policy statement**

1. To assist the University of Pretoria in providing open access to scholarly articles and conference papers resulting from research done at the University, and which are wholly or in part supported by public funding, staff and students are required to

    submit peer-reviewed postprints of their articles and published conference papers to UPSpace, the University's institutional repository (https://www.up.ac.za/UPSpace), AND
So why should you know about Creative Commons?

... in other words:
What has Creative Commons to do with Open Access?

Creative Commons SOUTH AFRICA
part of the Creative Commons international initiative

iP Law
Intellectual Property Law & Policy Research Unit
Open-access (OA) literature is digital, online, free of charge, and free of most copyright and licensing restrictions. What makes it possible is the internet and the consent of the author or copyright-holder.”
And Creative Commons deals with the copyright part of this definition
In order to understand this, we need to briefly talk about copyright law!
What is copyright?
Copyright is **one pillar of the IP protection** regime; others:

- Patents
- Trademarks
- Designs
Copyright deals with **creative works**
(such as journal articles)
“Copyright is the **exclusive right** in relation to work embodying intellectual content **to do or to authorize to do certain acts** in relation to that work.”
Protected works in SA

1. Literary, musical and artistic works;
2. Cinematograph films;
3. Sound recordings;
4. Broadcasts;
5. Computer programs
Exclusive rights ("certain acts")

1. reproduce
2. make adaptations
3. broadcast
4. distribute
5. perform
6. display in public
7. cause a work to be transmitted in a diffusion service
Basic requirements for copyright protection

- Originality
- Material form
- Qualified person

✓ No registration necessary
✓ The idea itself is NOT protected
Duration of copyright protection?
Duration of copyright protection in SA

✓ depending on the nature of work

✓ rule of thumb: end of the year in which author dies + 50 years,

or 50 years from end of the year in which work was made available to the public
Default & automatic All Rights Reserved situation
Permission is required for most uses of most works!
Unless a copyright exception and limitation applies.
Examples

✓ Fair dealing (study, research, private use)
✓ Exceptions for educational purposes
✓ Exceptions for libraries and archives
✓ Quotations
✓ Etc.
3 categories of rights holders

Those who are happy with what copyright law grants ... and:

Those who want *more* rights than the law affords

Those who want *less* rights than the law affords
Those who want more rights than the law affords:
MORE RESTRICTIVE LICENCE

Those who want less rights than the law affords (eg those who are involved in OA):
(MORE) OPEN LICENCE
(MORE) OPEN LICENCES / Copyleft licences
(MORE) OPEN LICENCES / Copyleft licences

creativecommons

GPL
Free as in Freedom
But one problem we face is that there appears to be a baseless **fear on the rights holder side** about what we are doing...

one example:
Dear [Name]

On behalf of songwriters and composers everywhere, I am urging you to support ASCAP’s Legislative Fund for the Arts (ALFA).

At this moment, we are facing the greatest challenge ever. Many forces including Creative Commons, Public Knowledge, Electronic Frontier Foundation and technology companies with deep pockets are mobilizing to promote "Copyleft" in order to undermine our "Copyright." They say they are advocates of consumer rights and that artists should be able to earn a living. In reality, they want to pay for the use of our music and also want to make sure that they don’t have to pay for the use of our music.

This is why your help now is vitally important. We fear that our opponents are influencing Congress against the interests of music creators. If their views are allowed to gain strength, music creators will find it harder and harder to make a living as traditional media shifts to online and wireless services. We all know what will happen next: the music will dry up, and the ultimate loser will be the music consumer.

We cannot afford to lose the support of our legislators either. We must urge the members of Congress to support our rights.

SOUTH AFRICA

part of the Creative Commons international initiative
On behalf of songwriters and composers everywhere, I am urging you to support ASCAP’s Legislative Fund for the Arts (ALFA).

At this moment, we are facing an unprecedented challenge ever. Many forces including Creative Commons, , Electronic Frontier Foundation and technology companies with deep pockets are mobilizing to promote "Copyleft" in order to undermine our "Copyright." They say they are advocates of consumer interest, but I believe they are, in fact, the agents of those who want to pay for the use of music creators and traditional media shifts to online and wireless services. We all know what will happen next: the music will dry up, and the ultimate loser will be the music consumer.”
This statement shows…
ASCAP does neither understand copyright protection nor Creative Commons licencing.
Creative Commons is not

**Anti-copyright** - rights management tool based on copyright

The **public domain** – giving certain permissions in advance

**Anti-commercial** – can charge for first use, commercial uses, “premium” service, or embed advertising

Part of the relationship between rights holder and user

Perfect or even the best solution for every situation and all creators

Not so great for computer programs
Creative Commons is

A not-for-profit organization of (mainly) volunteers

(so we have no financial interest in this whatsoever)
Creative Commons is

A set of pre-formulated licences
Creative Commons is Voluntary!!!
Creative Commons is

SOME RIGHTS RESERVED

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iP Law
Intellectual Property Law & Policy Research Unit
Creative Commons is

Used worldwide – 50+ national (ported) licences +1 intern. (unported) licence

[First set of CC South Africa licences launched in 2005 (Afrikaans, seSotho, isiZulu)]
Creative Commons is

Successful – est. 185,000,000 licensed works in 2010 (150,000+ in SA)
In a nutshell, CC aims to make creative material more accessible by providing free licences that rights holders can use to give certain permissions in advance…

potentially benefitting the public and rights holders
Some obvious benefits

- Increased profile and dissemination of work (marketing)
- Increased citations (important, eg, for academics)
- Users have to come back and ask for permission if their intended use goes beyond what is allowed under CC licence
- Avoid failures in existing markets as, eg, library budgets go down
- Public benefits – particularly greater access to knowledge
Examples?
Open-access scientific publishing project aimed at creating a library of open access journals and other scientific literature under a CC licence.

Charges a publication fee to be paid by the author or the author's employer or funder.
Btw, using CC can even be a **great business model**...
Does it work? #1

NINE INCH NAILS: GHOSTS I-IV

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Options:

- Free download (9 tracks) under CC licence
- US$5 download (all 4 albums, high quality)
- US$10 2 CD set (including download)
- US$75 deluxe edition 2 CD, 1 DVD, 1 Blu-ray disc
- US$300 Ultra-deluxe edition super pack
US$1 619 420 in the first week of sales!
Does it work? #2

Cory Doctorow
(award-winning Canadian author [age 39])

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His novels are available for free online under CC licences and can be purchased traditionally in print format.
“I’m giving these books away to sell more books, to find out more about the market and to increase my profile so that I can land [paid] speaking and columnist gigs. Not because I’m some patchouli-scented, fuzzy-headed, “information wants to be free” info-hippie. I’m at it because I want to fill my bathtub with money and rub my hands and laugh and laugh and laugh.”
“I’ve given away more than half a million digital copies of my award-winning first novel, Down and Out in the Magic Kingdom, and that sucker has blown through five print editions (yee-HAW!), so I’m not worried that giving away books is hurting my sales.”

“As long as gained sales outnumber lost sales, I'm ahead of the game.”
In summary:

Open Access requires the use of open licences such as Creative Commons
Now, how does it actually work?
Go to www.creativecommons.org
Here is the license you've chosen

You have selected the Creative Commons Attribution-ShareAlike 2.5 South Africa License. See how the license will look to your site’s visitors.

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Copy the text below to your Web site to let your visitors know what license applies to your works.

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Post your licensed images at Flickr.

Add a Creative Commons license to your blog.

Offline Work?
Mark a document not on the web, add this text to your work.

Optional next steps
Register your work with the CC Network.

Need more help? Read our tutorial.

After publishing your license, please consider supporting Creative Commons.
ITWeb article: “Copyright laws stifle education”

In today’s ITWeb article “Copyright laws stifle education”, it is argued that South African research shows that local copyright legislation hampers access to learning materials via digital portals. The article refers to research done by the African Copyright and Access to Knowledge (ACA2K) project and, in particular, the South African ACA2K research report. This report was written by the IP Law & Policy Research Unit’s Dr Tobias Schonwetter and Caroline Ncube as well as Pria Chetty, Principal Attorney for Chetty Law in Johannesburg. The entire ITWeb article can be found [here](http://www.itweb.co.za).
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Let us be honest: what are the downsides?
Well, rights holders should, as always, make an informed decision

1) Creative Commons licences are **irrevocable!**

2) Some debate as to what exactly constitutes “**non-commercial**”

   2008-09 study: “empirical findings suggest that creators and users approach the question of noncommercial use similarly and that overall, [...] creators and users are more alike than different in their understanding of noncommercial use.”

3) Compatibility of content licensed under different CC licences can be a bit tricky (check FAQ section on CC website)
Well, rights holders should, as always, make an informed decision

4) **Potential conflict with Collecting Societies** – but we are working on it and the newest versions of CC licences contain specific provisions, and talks are held between CC and various Collecting Societies to make these provisions work for all stakeholders.

5) Most other **so-called “CC problems”**, eg the criticism that CC licences are *difficult to enforce globally* or the *potential misappropriation* by third parties, are not so much CC problems but problems our copyright laws face generally.
If you need help implementing CC licences, call a lawyer!
Thank you!

my email address is: tobiasschonwetter@gmail.com
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