Navigating 21st Century Digital Scholarship: Open Educational Resources (OERs),
Creative Commons, Copyright, and Library Vendor Licenses

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ABSTRACT

Digital scholarship issues are increasingly prevalent in today’s environment. We are faced with questions of how to protect our own works as well as others’ with responsible attribution and usage, sometimes involving a formal agreement. These may come in the form of Creative Commons Licensing, provisions of the U.S. Copyright Act, or terms of use outlined by contractual agreements with library vendors. Librarians at Eastern Carolina University and Kansas State University (K-State) are among several university libraries now providing services to assist with navigating these sometimes legalistic frameworks. East Carolina University Libraries are taking initiatives to familiarize faculty, researchers, and students with Open
Educational Resources (OERs) and Creative Commons Licensing (CCL). At K-State, librarians in digital scholarship and electronic resources identified the overlap of their subject matters through their correspondence regarding users’ copyright and licensing questions; a partnership formed, and they implemented a proactive and public-facing approach to better meet user needs and liability concerns at a major research university.

KEYWORDS  digital scholarship, Creative Commons, copyright, electronic resource licensing, library vendor agreements, Open Educational Resources (OERs)

Academic librarians in the 21st-century are often faced with confounding questions from patrons regarding all the rights wrapped up in digital scholarly outputs, such as journal articles, books, book chapters, and even blog posts and websites. Sometimes, especially in smaller libraries, there is no copyright expert available, and copyright questions are sometimes tossed about like hot potatoes. In larger academic libraries, the copyright expert often has responsibilities in other areas besides copyright education and outreach.¹

Heather Seibert, Department of Research and Scholarly Communications at Joyner Library at East Carolina University, primarily focuses on creation and implementation of Open Educational Resources (OERs), as well as the importance and use of Creative Commons Licensing (CCL). This came about as a result of her involvement in the Alternative Textbook Grant program at East Carolina, as well as through her work developing a regional OER handbook. In those projects, she came to recognize that the rise in the use of OERs in Higher Education fostered a need for the greater understanding of CCL and use. There is a need for an understanding of what OERs are in order for them not to be confused with other openly
accessible materials. OERs “are teaching and learning materials that you may freely use and reuse at no cost, and without needing to ask permission. Unlike copyrighted resources, OER have been authored or created by an individual or organization that chooses to retain few, if any, ownership rights.”² Therefore, OERs must follow the Five R’s of use: Retain, Reuse, Revise, Remix, and Redistribute.

OERs are present in diverse formats including audio, visual, animation, and print. They include different types of materials, such as tests, textbooks, curriculum, syllabi, lecture notes, photographs, projects, and more. There are numerous places where OERs can be found,³ many of which are used every day by instructors, librarians, teachers, and researchers. Examples of OER platforms and websites include C-K12, OpenStax, Pixabay, Flickr, Khan Academy, Curriki, and MIT OpenCourseware.

At East Carolina, Heather focused on the application of the CCL on OERs. A CCL is applied to something that is already under copyright. Therefore, the CCL does not replace copyright; instead, it gives the creator the ability to dictate how the materials can be used. In the United States, a creative and original work is protected by copyright automatically as soon as it is fixed in a tangible medium of expression. Traditional copyright places hefty restrictions on creative and original materials, often without the creator’s awareness of these restrictions. Applying a CCL allows those materials to be used by others within parameters set by the creator without the user needing to expend time or energy to contact the creator for specific permissions or the copyright status of the work.

CCLs also meet US and international copyright standards. CCLs have three layers of code: a standard legal code approved by attorneys, a human readable code available for the average person’s comprehension, and a machine readable code that includes a summary of key
freedoms and obligations that are written into a format that software, search engines, and other technologies can understand.⁴

CCLs have six easy-to-read and understandable icon-based licenses. These icons can be combined in various ways depending upon the creator’s desired criteria for use of their work. Each icon defines how the work can be used. All licenses include the “BY” icon and term for attribution; some include the “NC” icon for “NonCommercial,” which dictates only non-commercial use of the work; the “ND” for “NoDerivatives” means that there can be no modifications of the work, though it can still be shared; and the “SA” for “ShareAlike” means that any changes or sharing of the work must also be shared with the original CCL.

![Creative Commons terms' icons](image-url)

**Figure 1** Creative Commons terms’ icons.

OERs are only one type of work that often have CCLs applied; other types of works can include TedTalks, photographs, YouTube videos, musical works, and more. The Creative Commons aggregator is a great starting point for finding CCL materials.

Many library patrons often do not know how to cite or to give attribution to a CCL work, so this is a common question at the library. There are some suggested best practices in order to give proper attribution to any work: users of the CCL work must give credit, include the title of the work, link back to the original work, indicate the type of license with the link, indicate whether any other copyright notice is associated with the work, and include an indication of any derivative of the work. The APA citation guide has recommendations on how to include CCL
materials and give attribution within a work. They recommend that a licensed work appear in three separate areas within a paper: first within the text; second, in conjunction with the work (e.g., an image or figure); and third, within the reference list.\(^5\)

Example of proper APA citation of a derivative (modified) CCL work:

![Image of a bench with a view](https://www.flickr.com/photos/30877770544/)

**Figure 2.** “I need a vacation,” by Heather Seibert, 2018, NASIG slides. Under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International (CC BY-NC-SA 4.0). Or This work, “I need a vacation” is a derivative of “Bench with a view” by eltpics, used under CC BY-NC 2.0. “I need Lee, Chela vacation” is licensed under CC BY-NC-SA 4.0 by Heather Seibert. Example of a CCL citation in the APA Reference List: eltpics. (2016). Bench with a view [Online image]. *Flickr*. Retrieved from [https://www.flickr.com/photos/30877770544/](https://www.flickr.com/photos/30877770544/)

The process of creating and obtaining a license for a work is a simple step-by-step process. This process can be done on the CreativeCommons.org website under the tab “Share your work.” The creator can use the form on the page to decide what parameters should be set for the created work based on specific criteria, which includes the previously discussed terms of use.

There have been concerns expressed that there is no legal recourse should there be a violation of the CCL. The use of the CCL has held up in litigations. One such case is Art Dragulis v. Kappa Map Group LLC. Art Drauglis, a photographer, posted on Flickr in 2008,
which included a photo, "Swain's Lock" under a CC BY-SA 2.0 license. In 2012 Kappa Map published an atlas using Dragulis’s photo as the cover. Dragulis sued Kappa Maps in 2014 claiming that Kappa Maps was in violation of copyright. The courts ruled against Dragulis, because the use of the map legally abided by the terms of the CCL. Attribution was given to Dragulis for the work, and it was shared with the same license as the original. Essentially the courts reiterated exactly what the license was meant to do. Therefore, it is an important reminder for creators and users to be aware of what CCLs do and do not permit.

When it comes to other types of creative and original works outside of Creative Commons, the copyright status of works, other types of licenses, copyright exemptions, and permissions then have to be considered. Rachel Miles focuses on copyright services at the Center for the Advancement of Digital Scholarship (CADS) at Kansas State University (K-State) Libraries, but she also focuses on other areas related to digital scholarship, such as digital scholarly publishing, Open Access (OA), Open Educational Resources (OERs), the institutional repository, and research impact and assessment. As a result, she had considerable challenges to overcome when she began her position in January 2016. At the core of all her responsibilities was copyright; without a basic understanding of its guiding principles, she would struggle to help in other areas related to digital scholarship. Her own education in copyright law, author rights, and licensing became paramount to her ability to assist the K-State community.

Copyright consultation requests and copyright questions come through a number of avenues at K-State Libraries, including on the phone, in-person, through the Help Desk, the Library Chat, the online copyright consultation form, and directly through email. Each question comes with its own unique set of circumstances, and, as such, even when someone can confidently call themselves a copyright expert, some questions still demand to be thoroughly
researched. Consequently, in the first six to twelve months of her position, Miles worked diligently on individual questions, acquiring new knowledge from each answered question. In addition, she immersed herself in literature,6 Massive Open Online Courses (MOOCs),7 copyright conferences,8 and relevant conference sessions at other library conferences.

When it comes to the reuse of others’ content, the “Framework for Analyzing any U.S. Copyright Problem,” originally developed by Kevin Smith and Lisa Macklin,9 was eventually adopted and adapted by CADS10 and applied to all copyright questions related to the reuse of content. Understanding how the Framework applies can be tricky for a copyright novice, especially without a thorough understanding of public performance rights, electronic resource licensing, exemptions in U.S. copyright law, CCL, and other issues that often overlap with copyright, such as privacy concerns and trademark law. The questions in the Framework should be followed in chronological order when assisting anyone in the United States with the legal and ethical reuse of others’ content:

1. Does the work have copyright protection?
2. Does the work have an existing license?
3. Is there a specific exemption that covers my use?
4. Is my use covered by fair use?
5. Do I need permission from the copyright holder for my use?

For example, when patrons ask questions about having film showings, the Framework was modified to the version represented in Table 1.
<table>
<thead>
<tr>
<th>Traditional Copyright Framework</th>
<th>Copyright Framework Applied to Showing a Film</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Does the work have copyright protection?</td>
<td>1. Can you show a film in the public domain?</td>
</tr>
<tr>
<td>2. Does the work have an existing license?</td>
<td>2. Can you show a film with a Creative Commons License?</td>
</tr>
<tr>
<td>3. Is there a specific exemption that covers my use?</td>
<td>3. Is there a film available through the library streaming services and/or available with public performance rights already attached?</td>
</tr>
<tr>
<td>4. Is my use covered by fair use?</td>
<td>4. If this is a showing for a class, can the educational exemptions, Sections 110(1) or 110(2), be applied to your use?</td>
</tr>
<tr>
<td>5. Do I need permission from the copyright holder for my use?</td>
<td>5. If this is an educational showing and only a portion or portions are shown for educational or scholarly purposes, can fair use cover your use?</td>
</tr>
<tr>
<td>6. Do you need to purchase the Public Performance Rights (i.e., permissions) in order to legally have the film showing?</td>
<td></td>
</tr>
</tbody>
</table>

**Table 1** Traditional copyright Framework applied to having a film showing.

Other questions arose about patron access to licensed electronic resources at K-State. As a result, Miles began talking and collaborating more with Christina Geuther, the electronic resources librarian at K-State Libraries. For example, could a patron send a copy of a downloaded journal article licensed by the university to a research colleague outside the university? In other words, did the license restrict the patron’s right to rely on fair use? The answer: it depends on the license.

After some lengthy discussions, Miles and Geuther decided that their areas needed to merge into a public facing resource with information on copyright and licensing that patrons could digest without the need to understand complicated legalese. After nearly ten months of
work, the LibGuide *Using Copyrighted and Library Content* was published. Most pages of the LibGuide cover common copyright and licensing questions, such as:

- Use of content in a closed online classroom
- Public film showings
- Public musical and theatrical performances at the university
- Recordings and distributions of public performances
- Using content in videos
- Using music in videos
- Use of content, such as figures and images, in academic work

In addition, one page defines common copyright and licensing terms and another page helps patrons understand whether they are accessing K-State licensed resources. Pages that cover commons copyright and licensing scenarios follow the Framework and link to relevant resources under each step.

During this time, other online educational copyright resources were primarily developed by Miles to help faculty and students with their own self-education. Some of these resources were included in the LibGuide, when appropriate.

A license is a contract between the library (licensee) and its vendor (licensor). Even if Fair Use is mentioned in the terms of the license, the terms of use will explain how this should be carried out by the licensee. Because the business terms of a license detail negotiated cost and terms of use, licenses are often confidential in nature. While there is what is referred to as a *boiler plate* of how they are written, licenses should be considered for their uniqueness. This leads to one of the challenges of creating the research guide on *Using Copyrighted and Library Content*: we needed to address what could be generalized about license agreements.
After the Kansas State University Libraries experienced a number of breaches of terms of use in its conventional licenses, Geuther sought Miles’ help to make a more public profile of more responsible use expected of the patrons by library licenses. Geuther brought the breaches to the attention of library staff at meetings and through email communication. To reach the patrons, Miles collaborated with her to define common scenarios that happen at a research library in which licensing might be called into question.

One of the ways forward was to present common pieces of license information needed in day-to-day activities of the library, such as in interlibrary loan and students accessing the material online and offsite. A spring 2017 upgrade to the Ex Libris Primo discovery layer allowed license fields in the license interface of the Alma unified resource management system to display their contents. Any field found in this acquisition module could be used, but we curated the options so that what information appeared would not overwhelm the reader and it could assist the most frequently needed information from the top down. The license details tab appears next to the electronic collection's hyperlink to full text in applicable search results. This method allowed K-State Libraries to meet the user's needs within their search process. It did not require separate instruction and could be adapted to their present search habits.

Other generalized information was gathered in the research guides on *Using Copyrighted and Library Content* and *Text and Data Mining at K-State Libraries*. These addressed patron search and resource reuse behaviors predominantly in the manners they might pose a risk of license breach allegations. Problematic behaviors might include systematic download of whole journal content, sending out a resource with restrictions to a LISTSERV community, and misunderstanding or perhaps not even knowing how licenses specify content can be used in online course preparation. We also wanted to highlight the advantage of using interlibrary loan,
and how it abides by secure electronic transfer clauses while also providing a statistic that could be used to determine resource value in collection development decisions.

The licensing explanations were meant just as much for the patrons as faculty and library staff. By treating the community equally in knowledge sharing, we empowered and encouraged positive behaviors across the user population. Users want to understand why and how they can best use the library resources, and the research guides' license information provided that opportunity to them. They also explained what the electronic resources librarian needed of the user or their project to negotiate for rights not addressed in the guides or current terms of use, to be more relevant to the user and a more service-oriented perspective.

Librarians Heather Siebert, Rachel Miles, and Christina Geuther collaborated at NASIG 2018 to communicate how to properly use and cite Creative Commons Licensed works, how to effectively follow the “Framework for Analyzing any U.S. Copyright Problem” to avoid copyright and licensing violations, and how to present the terms of electronic resource licensing to the public in layman’s terms. All of these topics are considered invaluable to a university community that is increasingly inundated with the convoluted exchange of digital works via multiple online channels in their scholarship, teaching, and other creative activities. Thus, the increased collaborations between librarian experts in the areas of copyright, licensing, and OERs has become increasingly crucial as digital scholarship continues to expand and evolve.
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