

Webinar, Creative Commons, 29th May 17

Questions and Answers

Question 1:

Can I publish a work under CC if it's containing at least one element which is not under a CC licence?

Answer:

It depends on the rights of the element. An element which is not protected by author's rights is freely usable. With regard to protected works, if you have enough rights to publish them under the conditions of the chosen CC-license, this publication is possible. Nevertheless, in case of doubt, you have to ask the rights' owner, or at least consult your legal service.

Question 2:

How can I use pictures in my slides?

Answer:

The use of a picture in a slide depends on the purpose: for instance If it is for educational purpose in a class, in principle you are allowed to use it because of the exception for education (art. 19, 1 b of the Swiss copyright Act). If you want to make a presentation for a public convention, you will need an authorization from the rights' owner, a direct *ad hoc* authorization or a license.

Question 3:

If you write an article or post on LinkedIn, is this transferable under creative commons?

Answer:

Most of the time social media do not claim any exclusive rights on your contents in their terms of use, but they require non exclusive licenses in order to share them with the other users (display, technical copies, etc.). This means, you should remain the rights' holder of your content and you may publish it under an open license. However you should always verify the terms of use of the social network before posting your article to ensure your future exploitation is compliant with the concede rights.

Question 4:

What is the difference between integrating CC licences in the metadata of a file and pasting a CC logo on the title page?

Answer:

The advantage of the metadata is that the information about the CC license will “stick” to the file. However, it is still possible for an user to change the metadata in a subsequent distribution. Thus the best and most safe solution is to indicate the license in the metadata (or in the file), and include it also on the web-page where the file is distributed.

Question 5:

I would like to know what is the controversy about public domain licenses

Answer:

The principle of a public domain license is to recreate the effect of the public domain. The problem is that in most of the countries, Switzerland included, there is no such things as a voluntary public domain license. In legal literature, some would see such licenses as a waiver to their rights by the author, and such a waiver would not comply with the conditions of validity of a waiver clause in general.

Question 6:

Is it necessary to add the source of a used picture under CC?

Answer:

In most countries an author can claim to indicate his/her name on his/her work (in Switzerland art. 9 CopA). But the license under which a work is published may request certain conditions, like the mention of the source. It is especially the case with the CC-licenses (clause of Attribution), you have to indicate the name of the author and source the work (e.g. a link, in the file or in comments). In any case, it is a good scientific practice to always indicate the source, and mandatory to avoid plagiarism.

Question 7:

I'm interested in the obligation to cite. Are there licences which allow users NOT to cite the source?

Answer:

You might find some licenses not requesting any attribution, but attribution is a common clause amongst public licenses, and an important clause in the CC-licenses. Nevertheless, in most countries the principle according author's rights is that an author could claim to indicate its name on the work (in Switzerland art. 9 CopA). If you do not provide the source, even if the license allows you to do so, the author could request you to indicate its name according to intellectual property law. In any case, it is a good scientific practice to always indicate your source, and mandatory to avoid plagiarism.

Question 8:

What are the variations between the international and national Creative Commons versions? What should I choose as a Swiss author?

Answer:

The national Creative Commons versions are designed to reflect some local particularities. However, the philosophy behind it and the main clauses stay the same.

Question 9:

Is there a difference between a CC0 and Public Domain?

Answer:

Yes, there is. Public domain designates the whole of common immaterial things, which are not or not anymore protected by author's rights. The CC0 license is designed to reproduce the effects of public domain on a work under author's rights protection. The difficulty of this license is, that in the absence of a voluntary public domain, we do not know how such clauses could be interpreted by courts, as certain clauses could be interpreted as waiver of author's rights, and not be compliant with local law. For more details on this problem please refer to: <https://creativecommons.org/share-your-work/public-domain/cc0/>

Question 10:

What does 3.0 mean?

Answer:

In general public licenses are revised from time to time, and a new version may be published to adapt to the last legal evolutions. CC-BY 3.0 means you have to refer to the third version of the CC-BY license.

Question 11:

If XXX is a Swiss academic institution, does the exception for education allow to share learning materials with students, without authorization from the author? And does this apply to online courses, too?

Answer:

The exception for education (art. 19, 1 b CopA) allows a teacher to share material with its students in the limits of the exception (e.g. no integral reproduction of a copy available on the market). The last legal discussions on the subject consider that this exception also applies to online courses, but only if the online use corresponds to the use in a classroom. The access must be restricted with a login/password protection, and allowed only to the current students (the access must be cut when the students are no more registered).

Question 12:

Where do you put the information regarding the reference of the picture ? Below the a picture, in the header or footer?

Answer:

There is no a fixed rule on where to place a reference, as long as it is possible to find it without unreasonable effort. The quotation must simply be designated as such and the source given “not far” from the quotation.

Question 13:

What if in my blog or course case study I have slides with images that I have downloaded from the Internet and sourced?

Answer:

The use of a picture in a slide depends on the purpose: for instance if it is used for educational purpose in a class, you are allowed to use it because of the exception for education (art. 19, 1 b of the Swiss copyright Act). This would be the case if you display the picture for your students. If you want to publish contents including the same picture on a freely accessible blog, you have to ensure you have sufficient rights from the rights' owner, through a direct *ad hoc* authorization or a license.

In any case, to source the picture is a good scientific practice, and corresponds to the attribution rights of the author and to the attribution clause (CC-BY), which is included in most public licenses.

Question 14:

Can I change the CC license of a publication over time?

Answer:

You can choose another license for any further publication. However, the previous licenses will not be withdrawn. If the new license is more profitable for the user, the user would be supposed to have “concluded” a new license for future uses, and the previous contract should be considered as obsolete. Some licenses have special mechanisms for the change of licenses. In any case you have to verify what the license arranges on this point.

Question 15:

Who can be the rights' holder if not the authors of a work under CC license?

Answer:

The author is not always the right's holder, because the author may transfer his/her rights to someone else. Especially when the author is an employee, a transfer or a license to the employer may be arranged or the work has been published and the rights transferred to the publisher.

Question 16:

What if a student wants to buy the rights to publish one of my lessons, but I do not want anyone to download it or reproduce it beyond the platform where it has been published?

Answer:

As the author and right's holder, you may arrange which rights you will license to the user. To ensure the user will not exceed its rights, you should be required from the licensee to protect your work with technical protection measures (block the right click, protection against print screen or recording, etc.).

Question 17:

What if I want to put my conference slide presentation on Slideshare? Should I add CC-BY license?

Answer:

When posting on an online platform, you have to ensure that the platform does not request conditions incompatible with a further exploitation under CC-license. You have to verify the terms of use of the platform before posting your slides. Of course, if your slides include works from others, you have to ensure you have enough rights on this previous material for such a publication.

Question 18:

Can I use a CC-BY license for an abridged version of a published conference paper for which the conference has the copyright?

Answer:

In this case you have already transferred your rights and you may not be able to exploit your work even partly. Before any publication you have to verify which rights you have transferred or licensed, and then check if you still have enough rights to do such partial publication.

Question 19:

What are the implications in a flipped classroom setting when students view materials outside the classroom? Assuming that the lessons are published on Moodle or other educational platform such as iVideo (IUFFP).

Answer:

The case is similar to a student taking home photocopied learning materials which were distributed during class, but dematerialized. The last legal discussions on the subject consider that the exception for education (art. 19, 1 b CopA) applies to online courses, if they are organized as a classroom. Even if the access is not in the institution but is circumscribed to your class (students), it would assimilate to a use in a classroom according to the exception for education (art. 19, 1 b CopA). The access must be restricted with a login/password protection, and allowed only to the current students to access the materials (the access must be cut when the students are no more registered / after the end of the course).