

## **A. EXECUTIVE SUMMARY**

Creative Commons Hungary welcomes the opportunity to make this submission in response to the *Questions for online consultation* released in conjunction with the *Content Online in the Single Market* Communication from the Commission to the European Parliament.

As outlined below, Creative Commons Hungary makes submissions on three areas of the Commission's consultation: (1) Types of creative content and services online; (2) Consumption, creation and diversity of online content ; (3) New business models and transition of traditional ones into the digital world, (4) Legal or regulatory barriers, (5) Piracy and unauthorized uploading and downloading of copyright protected works, (6) Digital Rights Management systems (DRMs); and (7) Complementing commercial offers with non-commercial services. Creative Commons Hungary makes submissions on each of these areas based on its experience to date in offering licenses and tools that enable creators to publish their works on more flexible terms. Creative Commons Hungary first provides background about its mission and current activities in Section B and then addresses each of these issues in Section C below.

## **B. ABOUT CREATIVE COMMONS AND CREATIVE COMMONS HUNGARY**

Creative Commons is a not-for-profit organization that is based in the United States and has offices in both Berlin and London. In addition, Creative Commons is the sole shareholder of iCommons, a UK company limited by guarantee. Creative Commons works to promote the sharing of knowledge and the collaboration between creators, educators and scientists across time and space by expanding the amount of flexibly licensed copyrighted material available for people to use and reuse.

Creative Commons Hungary is a nonprofit organization created and run by academics, authors, lawyers, artists, producers and publishers, consumers of culture. CC Hungary has translated Creative Commons licenses to Hungarian with the aim to foster the creation and distribution of user generated content by lowering the legal transaction costs of "remixing", "borrowing", creation of derivative works, creation of online and offline copies in Hungary. Creative Commons Hungary was initially started as a project of the Center for Media Research and Education at the Budapest University of Technology and Economics. (MOKK) The Center for Media Research and Education (MOKK) was founded in 2002 as a joint effort of the Department of Sociology and Communication at the Budapest University of Technology and Economics and the leading Hungarian telecommunication company, Hungarian Telecom, with the aim of furthering multi-disciplinary research and education in the field of new media in Hungary. MOKK is built around the conviction that it is impossible to understand the sociocultural effects of new technologies without taking into account their technical foundations and attributes—and equally, that in order to develop successful new media applications one needs to understand the sociocultural context of their use. For more information about MOKK, visit: <http://mokk.bme.hu/>

**The core CC-licensing project** As part of our core licensing project, Creative Commons Hungary offers, for free, standard copyright licenses from its website, which are simple to use and understand both for creators and users of copyright material.

### *Overview of Creative Commons licensing model*

The Creative Commons licenses are based on the existing copyright system and provide a simple way for owners of copyright to retain their copyright and clearly signal to the public that they may make certain uses of their creative works. Creative Commons' approach addresses the problem that the default "all rights reserved" protection attaches to a copyrightable work the minute it is made, irrespective of whether this accords with the creator's intent. Many creators lack the ability or resources to vary that default "all rights reserved" level of copyright protection. In addition, the status quo "all rights reserved" copyright protection increasingly serves as the standard business model for most copyright-based industries to date, whether it be publishing, music or education.

The restrictive nature of maximized copyright protection is thrown into stark relief by the potential for access, use and reuse of content made possible by digital technologies. Digital technologies enable the storage, availability, dissemination and, perhaps most importantly, repurposing of content greater than was possible in the analogue world. However, this potential cannot be leveraged in an "all rights reserved" world.

Creative Commons licenses offer a way for society to enjoy the benefits digital technologies. They are private, voluntary tools that create a public benefit. Creators identify which rights they wish to reserve and which they wish to license to the public—"some rights reserved"; the public has access to a pool of pre-cleared content that is clearly labeled to permit certain uses and can therefore make greater use and reuse of such content than would be possible with "all rights reserved" content.

Using Creative Commons' simple core license generator, a creator can decide what uses others may make of their work: whether or not others may make commercial use of their work; whether or not others may make derivative works; and, if they may, whether those derivative works must be made available to the public on the same licensing terms (the "sharealike" condition which is similar to the copyleft requirement in free and open source licenses). All licenses require attribution as specified by the author. These license options produce six different licenses—with the least restrictive being the Attribution license and the most restrictive being the Attribution-NonCommercial-NoDerivatives license.

These licenses were first made available to the public towards the end of 2002. Once a license is selected, the licensor receives their license in three formats: in human-readable format – the Commons Deed, which sets out a summary of the key license terms; in lawyer-readable format – the Legal Code, which is the document that is drafted to be enforceable in a court of law; and, in machine-readable format – Resource Description Framework (RDF) metadata, which describes the work according to the key license terms.

To the extent a work is in an online format, the licensor can include the Creative Commons' metadata with their content. For both online and offline content, the licensor applies the "Some Rights Reserved" logo or other notification to their work; this logo or notification then links to the Commons Deed, which in turn links to the Legal Code. By the use of the "Some Rights Reserved" or other notification and linking through to the Commons Deed, which in turn has easily comprehensible license buttons and a summary of the key license

terms, Creative Commons' licensing model renders the license terms applicable to these works easy and simple to understand, thereby encouraging compliance and promoting use and reuse of content. By rendering CC-licensed material machine readable (through the use of the metadata), through the use of its metadata, Creative Commons licensing model facilitates the ease with which members of the public can find flexibly licensed content.

Creative Commons Hungary's view on culture is that cultural products (especially digital cultural products) are hardly the unique creations of individual authors rather than collaborative efforts of people sharing and building on each other's ideas, efforts, resources.

Creative Commons and CC Hungary is not by definition a content provider but offer free-to-use software tools and online services to producers and users of creative products to share, reach potential audiences, archive, etc. Besides that Creative Commons Hungary provides metadata attached to online and offline content that describes the permissions and conditions defined by the creator of the content. CC Hungary also offers online services to the online community.

Based on these experiences we provide answers to the questions below.

## **C. SUBMISSION**

### **(1) Types of creative content and services online**

*2. Are there other types of content which you feel should be included in the scope of the future Communication? Please indicate the different types of content/services you propose to include.*

Creative Commons Hungary proposes to add to the Commission's taxonomy of Creative Content content that was produced by users of a certain service:

- Metadata created by the user attached to various contents in from of copyright permissions, reviews, ratings, or relationship to other content,
- Metadata, reviews, ratings and advices contained in any communication system (p. e: e-commerce systems, marketplaces, peer-review systems, online games)
- characters, items, other environmental goods created by the users in online games

This type of common knowledge embedded in communication systems is the most valuable resource of these systems, therefore fostering the creation of such knowledge and protecting it from appropriation must be a clearly set goal.

### **Consumption, creation and diversity of online content**

*4. Do you think that adequate protection of public interests (privacy, access to information, etc) is ensured in the online environment? How are user rights taken into account in the country you live / operate in?*

Digital technologies has opened up the possibility of content creation and distribution for groups who were mere 'consumers' under different (broadcast) media systems. This technological shift resulted in a cultural shift with more and more culture in tangible form being produced by its users, the consumers themselves. Sadly, the legal framework governing cultural production and distribution have not followed this phenomena, and now it serves as a barrier to the entry of bottom-up content producers to the European and global content markets.

Intellectual property regulation is out of sync with current technological potentials. It does not acknowledge the fact that a large number of former consumers have now in fact the potential to turn into producers and distributors of culture. We fear that current copyright legislation is defined by the lobby groups of incumbent media industries creating a regulatory framework totally incompatible with the bottom-up potential of digital technologies.

If the legal and regulatory frameworks develop as incumbent media industries dictate they will be prohibitive to the bottom-up content production sector. We have identified several fields that need special attention to ensure that bottom-up content creation and distribution grows in the future:

- The Commission must develop and protect fair use (*Exceptions and limitations, Ausnahmen und Beschränkungen*) in the current copyright legislation to ensure the accessibility of copyright-protected materials for creative reuse.
- The Commission must protect these rights within the DRM-protected digital domain as well. CC Hungary finds it unacceptable that fair use provisions can be circumvented in case of DRM protected materials.
- The Commission needs to develop the European Public Domain by protecting it from the increasing length of copyright protection, from appropriation by DRM technologies.

*6. How far is cultural diversity self-sustaining online? Or should cultural diversity specifically be further fostered online? How can more people be enabled to share and circulate their own creative works? Is enough done to respect and enhance linguistic diversity?*

The key to fostering cultural diversity is the support of the non-commercial creation and distribution of cultural goods. Non-commercial activity is defined by the lack of financial transactions connected to the creation (no financial incentives needed to produce), distribution (cultural goods exchange hands without monetary transaction), and display (consumption is not the factor of fees and/or is accompanied with no or marginal advertising) of cultural goods.

Statistics from various content aggregator services working in the non-commercial domain support the viability of non-commercial alternatives.

*Flickr:* Most notable among these is Flickr, the free, online photo directory that was purchased by Yahoo! in March, 2005, for \$40 million. Flickr, since its inception, has enabled people who upload their photos to choose a license, from the six that form CC's core licensing suite, to apply to their images that they make available to friends, family or

the world. In August 2005, Flickr's dedicated "Creative Commons page" indicated that there were approximately 4.1 million images licensed under a Creative Commons license. In June 2006, Flickr shows 16.4 million images available at Flickr under a CC-license.

*Soundclick:* A music website founded in 1997, Soundclick is one of the largest music communities on the Internet. In August 2004, Soundclick incorporated CC-licensing into its upload process. In July 2006, Soundclick reports over 240,000 CC-licensed tracks and the site allows searching of these tracks by genre.

*Jamendo:* This Luxemburg-based music sharing and community platform is available in a variety of languages including French, English and Spanish. All music uploaded to the site is licensed under a Creative Commons license and available to the public either for free as streaming or as downloads through BitTorrent networks. Since it commenced operations 18 months ago, over 1,000 albums have been uploaded to the site. Jamendo allows searching for albums based on popularity or by license attribute (eg. commercial use permitted, derivative use permitted).

However, the term 'non-commercial' needs to be redefined in face of the individuals' ability to draw marginal revenues from (Google) advertising, donations, endorsements, etc. One useful action of the Commission could be to set out a clear definition of the non-commercial domain and define measures to protect it along with the public domain and the fair use of copyrighted cultural items.

**On the other hand, when an author decides to step into commercial markets, securing the revenue streams from different European countries proves difficult.**

One way of increasing international competitiveness of local cultural products is the creative use of digital technologies to distribute cultural products freely in the non-commercial domain. Along that, easy transition from the non-commercial to commercial activities is necessary to provide incentives to create vibrant transnational cultural markets. However at the moment neither the non-commercial activity is acknowledged, nor the non-commercial-to-commercial transition is easy enough.

*11. What kind of difficulties do you encounter in securing revenue streams? What should in your view be the role of the different players to secure a sustainable revenue chain for creation and distribution online?*

When CC Hungary began porting the CC licenses to the Hungarian jurisdiction one issue we had to face was the conflict between the practices of collecting society membership and direct licensing by artists, including by Creative Commons licensing.

Collecting societies are bodies that are created either by private agreement or by statute that represent creators, collect royalties on their behalf and look after the enforcement of their rights. Collecting societies bring various benefits for creators: they enable efficiencies in the collection and administration of royalties for use of work; they will enforce a composer's rights against a copyright user who refuses to pay a license fee; due the efficiencies of scale and their collective nature, the societies facilitate the collection of royalties for small uses and for unplanned uses of works such as on radio or TV. For the most part, different societies represent different types of creators — writers, composers, visual artists, filmmakers etc.

In some jurisdictions (namely in the US) because of rigorous enforcement of antitrust laws in the first half of the 20th century, music performing rights societies take a nonexclusive license from the composer as part of representing them collectively. This means that ASCAP and BMI members retain ownership of their copyright and can engage in direct licensing, including via CC licensing.

In most other jurisdictions to which Creative Commons licenses have ported in Europe, music performing rights societies take an assignment of ownership to the performing rights to all past, present and future works. This comprehensive grant of performing rights — the key right for communications over the Internet — to the collecting societies, means that artists do not own all of the rights in any of their works so as to enable them to engage in direct licensing if they are currently a member of a collecting society; or, if they are not yet a member of a collecting society, this comprehensive grant of rights to the societies means that a new artist cannot CC license their work if they ever want to join a collecting society.

A further problem arises that collecting societies may be collecting royalties for CC artists who are unable to join the society. Although this issue, for the most part, is broader than just CC licensing, because of the rapid increase in CC licensing, the conflict between most collecting society membership agreements and direct online licensing has narrowed to being a conflict between collecting society membership practices and CC licensing.

Creative Commons Hungary is engaged with Hungarian Collecting Societies in this issue. We see Collecting Societies as key players who can provide critical revenue streams not only to professional creators, but bottom-up players as well. We hope to reach a solution where:

- any author (independent of a Collecting Society membership) can choose
- any of his/her work to be represented by a Collecting Society
- in the Single European Market
- based on detailed per-use accounts made possible by the development of technology.

Creative Commons Hungary supports legislation that helps the emergence of such a mediator.

### **Case study 1 – non-profit music distribution**

A Hungarian band playing world music has released one of its songs under a non-commercial Creative Commons license to create a remix contest in which artists from all over the world were invited to participate in. The contest was a success, with nearly a hundred contributions. However, neither the band, nor the organizing not-for-profit community radio station is able to release a record featuring the winning remixes without a legal conflict with the collecting society even though all of the authors gave direct permission to do so using appropriate CC licenses.

The band has the choice to leave the CS altogether or letting the CS collect fees for the non-commercial, authorized uses of their works.

The majority of remixers are not members of any CS or they are members of CS's in another country. Their projected revenue from the fees collected by the CS is zero.

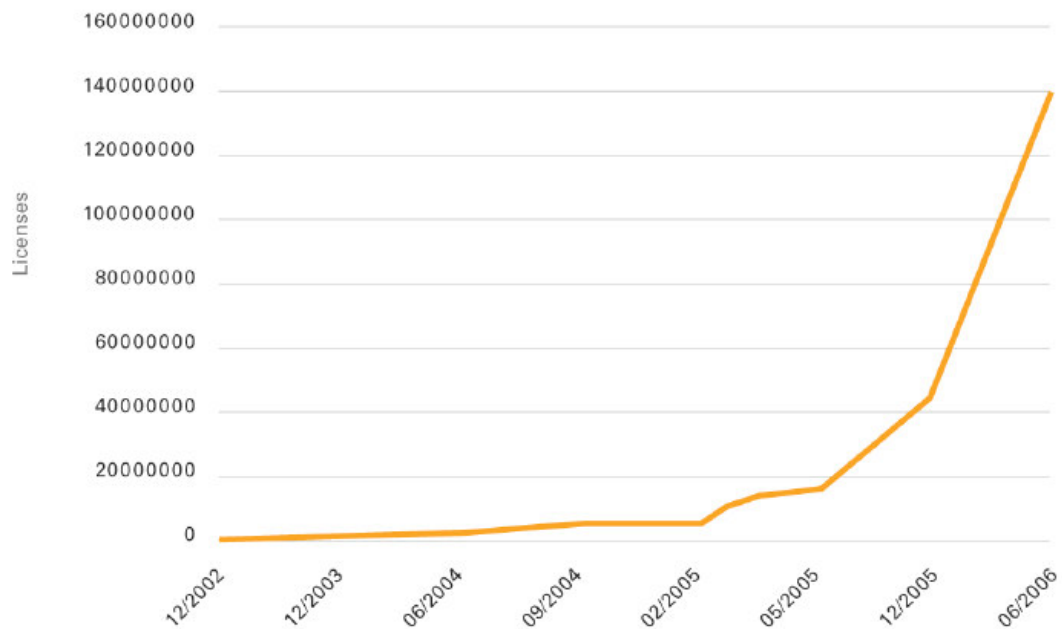
The fee charged by the CS is at the moment prohibitive for the not-for-profit producer, even though it created international visibility and recognition for a local cultural project.

*17. Are there any legal or regulatory barriers which hamper the development of creative online content and services, for example fiscal measures, the intellectual property regime, or other controls?*

Creative Commons has created a web of local licenses that provide uniform rights to authors and users globally. CC has done this by adopting the licenses to the local copyright legislations. The benefits of such globally enforceable content licensing scheme is obvious from the exponential growth of content licenses under CC.



**License Adoption, 12/2002–06/2006**



These data warn us that not all creators and distributors of culture are in favor of a strict copyright legislation. We have identified some key points in the current copyright legislation that reflect the needs of the bottom-up creators:

- instead of trying the impossible mission of providing a legal protection of creative works under the present technological framework, future copyright legislation should shift the responsibility and the task of creating an effective protection to those who are able and willing to pay for it. The software and media industry has already created several innovations to protect digital content. If any of these solutions are successful, then they are a good substitute to legal protection. However, at the moment increasingly strict copyright legislation cannot prevent piracy, but hinders the creation of derivative works by raising the costs excessively (chilling effect).
- Instead of helping content owners in their efforts of enclosing the public domain, future copyright legislation should focus on (1) protecting the public domain and (2) the limitations to and exceptions from copyright protection.
- One size does not fit all. Current uniform copyright legislation is unable to respect local economic, cultural, normative differences. In many cases the Hungarian legislator understood the needs of a unique situation and was willing to act accordingly, but the obligation to respect EU legislation have prevented this positive change. Future legislation should acknowledge the difference between national and cultural/linguistic boundaries in Europe.
- Regarding the high number of creative works in Europe that were created using public support and subsidy, we think these works belong to the public domain to the

extent of the public support. Future legislation should ensure that any creation using public funds should have a different level of private ownership than those created purely out of private funds.

*22. To what extent do education and awareness-raising campaigns concerning respect for copyright contribute to limiting piracy in the country or countries you operate in? Do you have specific proposals in this respect?*

Creative Commons is active on the education and awareness-raising field in every country. Creative Commons Hungary has itself organized several conferences and workshops and participated in numerous public events, conferences which were aimed at the bottom-up content producers, distributors. Creative Commons Hungary also provides information on copyright on its services and its website. We have found that these events served their purpose and were able to create an understanding of current copyright legislation and the barriers it raises in front of bottom-up creators and distributors. As a result of this numerous Hungarian authors are now using Creative Commons licenses.

*23. Could peer-to-peer technologies be used in such a way that the owners of copyrighted material are adequately protected in your field of activity and in the country or countries you operate in? Does peer-to-peer file sharing (also of uncopyrighted material) reveal new business models? If so, please describe them?*

User controlled distribution technologies (bittorrent, open source p2p platforms, etc) will dominate the content distribution market in the future as well. These technologies provide cheap and easy access to a global audience, and as a result, individual content producers will continue to use these channels as long as commercial distributors are unable to work on a business model where the revenue shared between the producer and the distributor reflects the actual costs of respective players and is acceptable for the general audience as well.

If the prices charged by traditional content producers and distributors continue to reflect their (long gone) monopoly power, re-users as well as consumers of cultural products will continue to prefer low-cost, free or even illegal content and individual distribution channels. Thus Creative Commons Hungary expects the demand for CC licensed content to grow exponentially. This is in line with our encouraging experiences on the effect of freely available copies to the markets of commercially available ones. Free copies available for download at no cost provide early visibility and a loyal fan base to authors who can charge for complementary products (like concerts, merchandize) easily later. Several innovative business models based on free content distribution are under trial in several CC countries.

Also, apart from Creative Commons, we have experienced a positive collateral consequence of the peer-to-peer file-sharing in Hungary. Markets in Hungary will never be able or willing to supply all the demand for cultural goods that exists, nor will the structure of demand be conveniently servable. Realizing this the state uses significant public resources to bridge the gap between supply and demand on the distribution side in forms of public

libraries, archives, museums, and on the production side in form of public subsidies and grants to authors, publishers, producers.

This situation has changed with the advent of file-sharing communities and the internet. Users have the chance to access cultural goods that are very difficult and/or costly to get through the traditional systems of distribution. Through the efforts of users digitizing and sharing these goods many segments of culture suddenly become accessible: works that were buried by the ever new bestsellers, works that have never had the chance to become a classic, or were never intended to become one, works produced for and by marginal groups of marginal interests, works that have never had a chance to be commercially viable, works that would not be able to cross geographical and/or cultural distances otherwise, work that are well beyond the interest of market sellers and the collecting scope of local libraries.

Thus peer-to-peer file-sharing has radically expanded the number of accessible cultural goods that were not otherwise carried by market players.

### **Digital Rights Management systems (DRMs)**

*25. Do you use Digital Rights Management systems (DRMs) or intend to do so? If you do not use any, why not? Do you consider DRMs an appropriate means to manage and secure the distribution of copyrighted material in the online environment?*

Creative Commons Hungary strongly opposes DRM systems in their current state as they are:

- substituting the copyright regime with technological measures and contractual agreements
- locking down user-rights (Limitations and Exceptions) provided to them in copyright legislation
- are incompatible with each other
- in the long term they cannot prove to be ‘unbreakable’ – thus unable to solve the problem of piracy.

Creative Commons Hungary respects the right of the author to use DRM, however we propose alternatives to technological measures such as adequate pricing, development of complementary products, taking advantage of network effects.

*30. In which way can non-commercial services, such as opening archives online (public/private partnerships) complement commercial offers to consumers in the sector you operate in?*

Creative Commons Hungary believes one motor of the growth of European content production is the non-commercial domain of bottom-up content production and distribution. The aggregate resources of consumers-turned-producers are by several magnitudes higher than the resources of the traditional media industries. Thus, our primary focus is to foster the development of this field, and to push for a regulatory framework that acknowledges and supports the non-commercial domain.

On the other hand the European Union as well as her member states allocate significant amounts of public funds to create cultural goods and services. Creative Commons view is that these (at least) publicly funded works belong to the European Public Domain and should be free to be accessed, used, and built upon by those who have contributed to their production.

We are committed to providing freedom on the technological layer by sticking to network neutrality, and opposing DRM technologies, favoring copyright legislation that respects and supports free use and the public domain, supporting institutions that respect individual authors and provide them with possible revenue streams.