

Taking OER beyond the OER  
Community –

Licensing Issues Overview

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UNESCO Policy Forum on  
Open Educational Resources

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part of the Creative Commons international initiative



First of all:

I am not going to talk about **WHY we should have Open Educational Resources** but will look at the legal aspect of **HOW we do it..**

More specifically, I am going to talk about  
**Creative Commons** licences

# What has **Creative Commons** to do with **OER**?



THE WILLIAM AND FLORA  
**HEWLETT**  
FOUNDATION

“OERs are **teaching, learning, and research resources** that reside in the public domain or have been **released under an intellectual property license that permits their free use or re-purposing** by others. [...]”

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 **text books** and 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

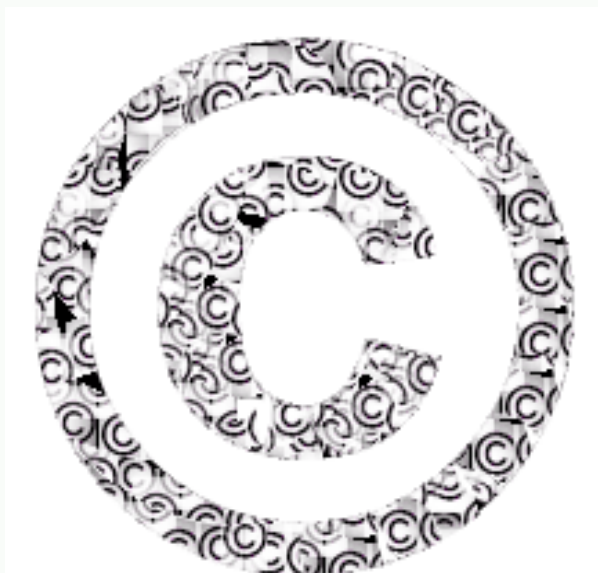
- 1. Literary, musical and artistic works;**
2. Cinematograph films;
- 3. Sound recordings;**
4. Broadcasts;
- 5. Computer programs**





## 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



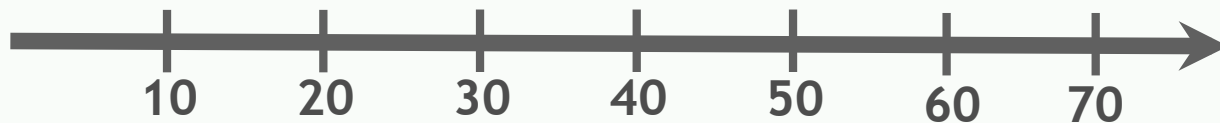
- **Originality**
- **Material form**
- **Qualified person**

✓ no **registration** necessary

✓ the **idea** itself is NOT protected

# Duration of copyright protection

- ✓ depending on the nature of work
- ✓ minimum of 50 years after the death of the author for literary works (Berne Convention)



Default & automatic **All Rights Reserved** situation for  
copyright protected materials, incl OERs

**Permission** is required for **most uses** of **most works!**







Unless a **copyright exception**  
and **limitation** applies.

## Examples

- ✓ **Fair dealing / fair use** (study, research, private use)
- ✓ Exceptions for **educational purposes**
- ✓ Exceptions for **libraries and archives**
- ✓ **Quotations**
- ✓ Etc.

But many of these potentially access-enabling e&l **only allow copying of small parts of works** and are often **too vaguely crafted** to be reliable access mechanisms (especially if there is a lack of domestic case law)

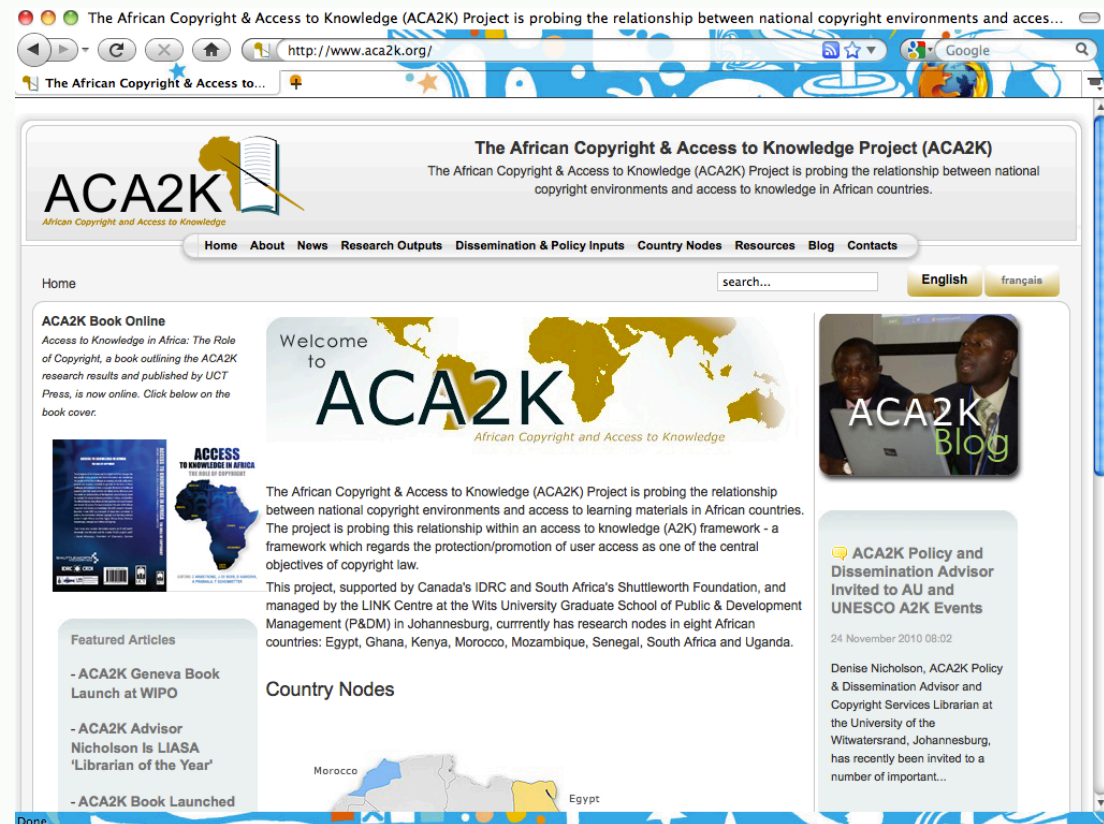
The screenshot shows the homepage of the African Copyright & Access to Knowledge (ACA2K) Project. The browser address bar displays <http://www.aca2k.org/>. The website header features the ACA2K logo and the project's full name. A navigation menu includes links for Home, About, News, Research Outputs, Dissemination & Policy Inputs, Country Nodes, Resources, Blog, and Contacts. A search bar and language selection buttons for English and français are also present.

The main content area is divided into several sections:

- ACA2K Book Online:** Promotes the book "Access to Knowledge in Africa: The Role of Copyright" by UCT Press, available online.
- Welcome to ACA2K:** A central banner with a map of Africa and the project's mission statement: "The African Copyright & Access to Knowledge (ACA2K) Project is probing the relationship between national copyright environments and access to learning materials in African countries. The project is probing this relationship within an access to knowledge (A2K) framework - a framework which regards the protection/promotion of user access as one of the central objectives of copyright law." It also mentions support from Canada's IDRC and South Africa's Shuttleworth Foundation, and lists research nodes in Egypt, Ghana, Kenya, Morocco, Mozambique, Senegal, South Africa, and Uganda.
- Featured Articles:** Lists recent news items such as "ACA2K Geneva Book Launch at WIPO" and "ACA2K Advisor Nicholson Is LIASA 'Librarian of the Year'".
- Country Nodes:** A map of Africa with markers for Morocco and Egypt.
- ACA2K Policy and Dissemination Advisor Invited to AU and UNESCO A2K Events:** A news item dated 24 November 2010, mentioning Denise Nicholson, ACA2K Policy & Dissemination Advisor and Copyright Services Librarian at the University of the Witwatersrand, Johannesburg.

So the bottom-line is that **copyright often restricts access to learning materials -**

**and access in developing countries can often only be achieved by way of copyright infringement!**



The screenshot shows the homepage of the African Copyright & Access to Knowledge (ACA2K) Project. The browser's address bar displays the URL <http://www.aca2k.org/>. The website header features the ACA2K logo and the project's full name. A navigation menu includes links for Home, About, News, Research Outputs, Dissemination & Policy Inputs, Country Nodes, Resources, Blog, and Contacts. A search bar and language selection buttons for English and français are also present.

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- ACA2K Book Online:** Promotes the book "Access to Knowledge in Africa: The Role of Copyright," published by UCT Press.
- Welcome to ACA2K:** A central banner with a map of Africa and the project's title.
- Project Description:** Explains the project's focus on the relationship between national copyright environments and access to learning materials in African countries, and its role in the A2K framework.
- Support:** Lists the project's sponsors, including Canada's IDRC, South Africa's Shuttleworth Foundation, and the LINK Centre at Wits University.
- Country Nodes:** A map of Africa with highlighted nodes for Morocco and Egypt.
- Featured Articles:** A list of recent news items, including the ACA2K Geneva Book Launch at WIPO, an ACA2K Advisor nomination, and a book launch.
- ACA2K Policy and Dissemination Advisor:** A news item dated 24 November 2010, mentioning Denise Nicholson's role and her recent invitation to an important event.

**OERs are a legal alternative!**

But to be **OPEN**, we need to **get rid of** at least some of the **copyright restrictions**.



and this can only be done through....

# (MORE) OPEN LICENCES / “Copyleft” licences



But one problem we face is that there is **fear on the rights holder side** about what we are doing...



# 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

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 that allow more uses than the law does



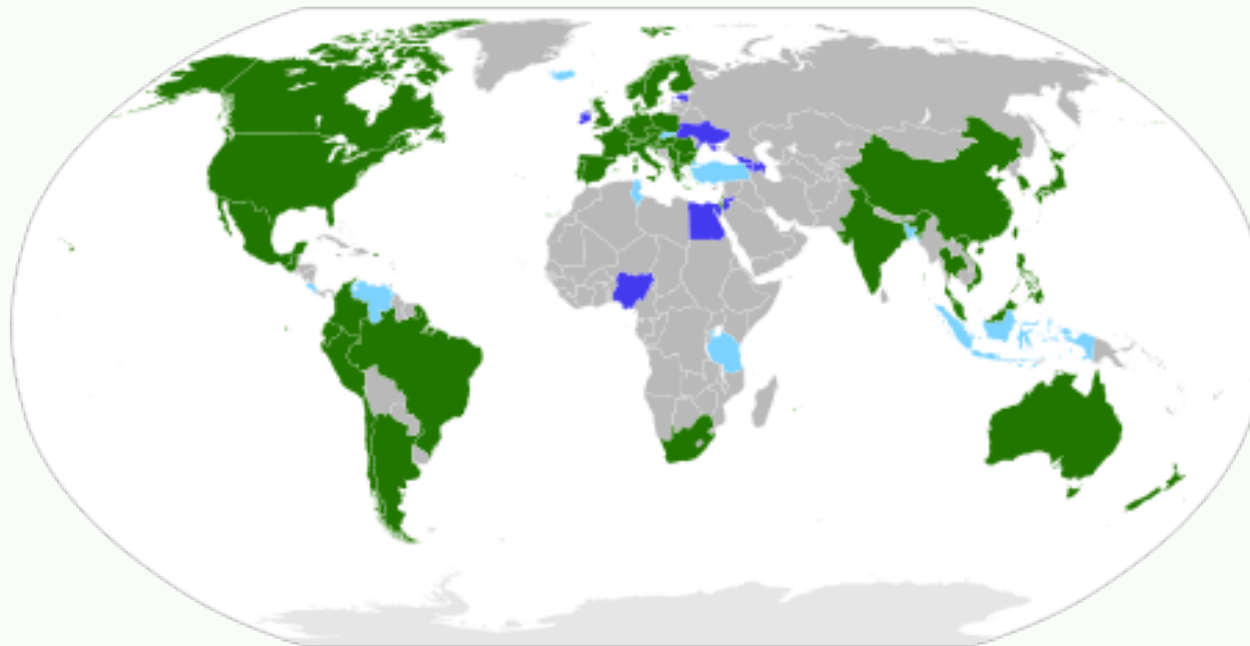
Creative Commons is



SOME RIGHTS RESERVED

# Creative Commons is

## Used worldwide - 50+ national CC licences



Creative Commons is

**Successful** - approx. 185,000,000 licensed works in 2010



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part of the Creative Commons international initiative

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Intellectual Property Law  
& Policy Research Unit

Examples?





Free Online Course Materials | MIT OpenCourseWare

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http://ocw.mit.edu/index.htm

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**How do I license and create open content?**

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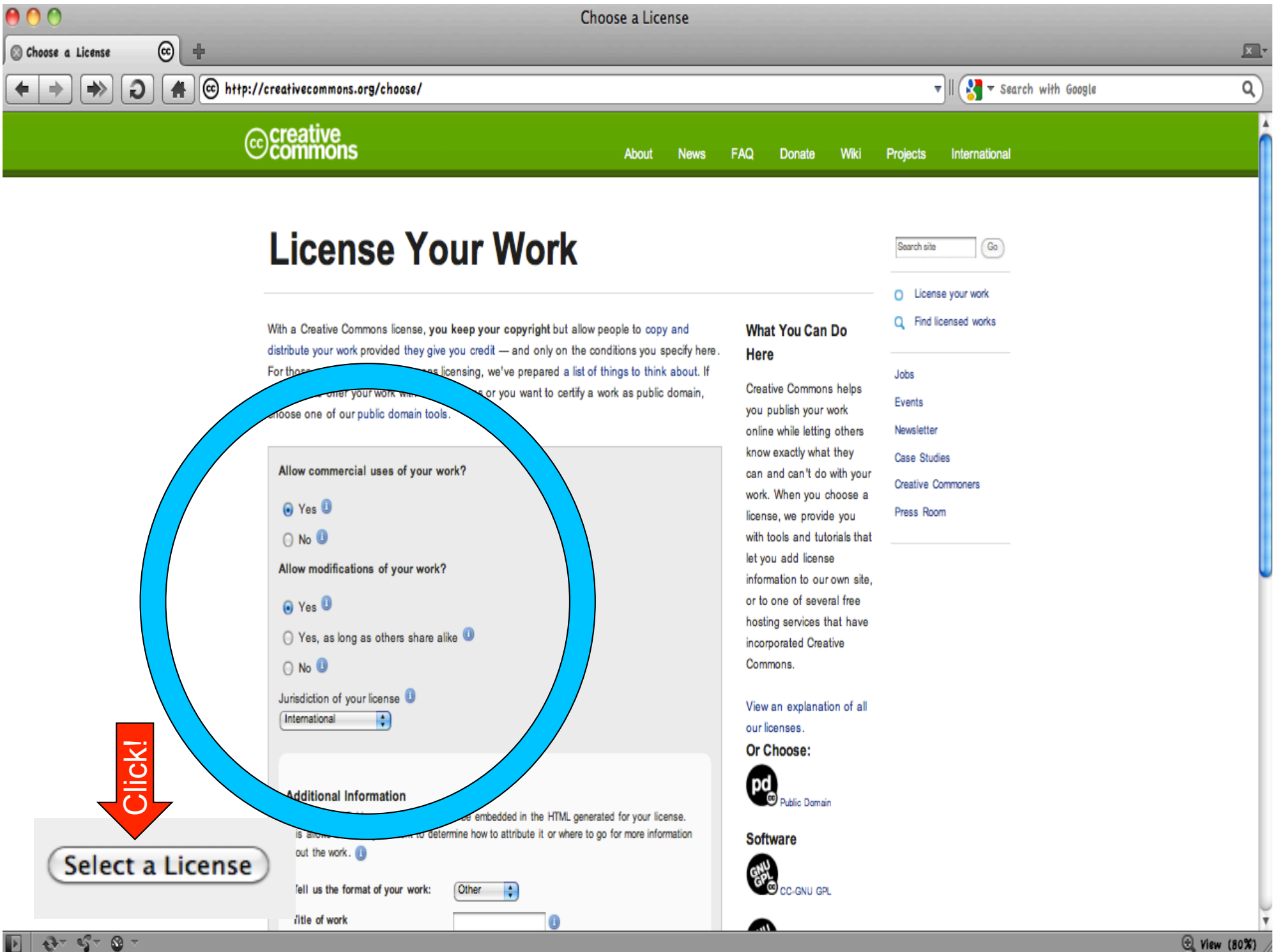
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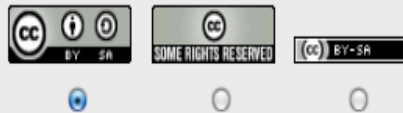


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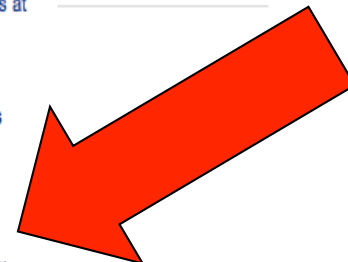
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## Offline Work?

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

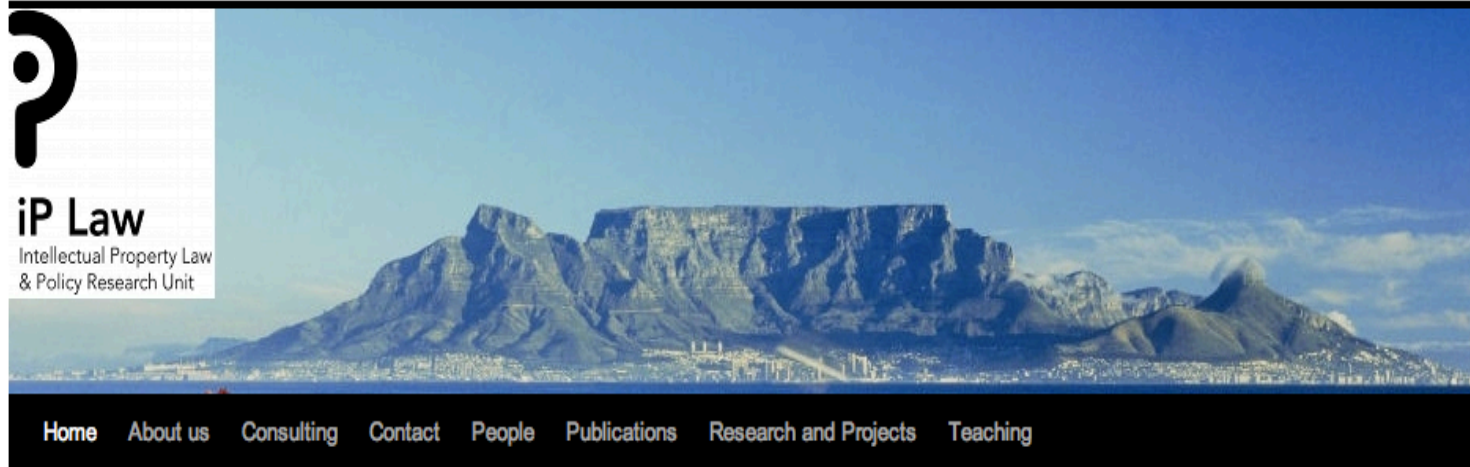
## Optional next steps

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## ITWeb article: "Copyright laws stifle education"

Posted on 23/07/2010 by [tobiasschonwetter](#)



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](#).

### Welcome!

Welcome the University of Cape Town's Intellectual Property Law & Policy Research website.



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So what is **THE BEST CC licence for OERs?**

It appears that there are **2 preferred licences** (and an ongoing dispute amongst scholars as to which one should be used):

**CC BY**

**CC BY SA**

**CC Learn:** “the terms of different licences are often **incompatible** with one another in a way that prevents combining materials from different providers.”

[hence, **CC BY** should be used]

Compatibility chart		Terms that can be used for a derivative work or adaptation						
		by	by-nc	by-nc-nd	by-nc-sa	by-nd	by-sa	pd
Status of original work	pd	■	■	■	■	■	■	■
	by	■	■	■	■	■	■	
	by-nc		■	■	■			
	by-nc-nd							
	by-nc-sa				■			
	by-nd							
	by-sa						■	



**C Lowe** (“Considerations for CC licensing of Open Educational Resources: The Value of Copyleft” [2010])  
**favours CC BY SA licences**

In my view the answer only can be

**it depends - there is no clear-cut answer!**

... driven by long-term or short term goals?

... what kind of OER material are we dealing with?

... etc

Again: **CC is not perfect!**

- 1) **Compatibility** of different CC licences
- 2) What exactly constitutes “**non-commercial**”
- 3) **Potential conflict with Collecting Societies**
  - but we are working on it and the newest versions of CC licences (3.0) contain specific provisions
- 4) But 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

## In conclusion:

**Should we talk about copyright at UNESCO and COL?  
(Stamenka)**

Very much so!

Because we need CC licences for OERs only due to  
**shortcomings of national copyright laws**

## In conclusion:

And national copyright laws look like they look because of **policymaking on the international level** (WIPO/ WTO) - thus, **adding UNESCO's / COL's voice to those discussions is crucial!**

# Thank you!

my email address is: [tobiasschonwetter@gmail.com](mailto:tobiasschonwetter@gmail.com)

(“Access to Knowledge in Africa: The role of Copyright” [2010]

[www.aca2k.org](http://www.aca2k.org)

“Introducing Copyright” [Hofman, COL [2009]]

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