

Creative Commons (CC) : A New Model for Copyright Management

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CC: Key Themes

- **Sharing, Accessing, Collaborating and Negotiating: Content, Knowledge, Culture and Production – “with a minimum of fuss”**
- **Fueled by the negotiability, innovation and creative potential of the digital environment – “cut and paste”, “remix” “P2P”**
- **Free Culture – Free to Access – a repository of open space or commons unencumbered by large transaction costs and threats of law suits - Lessig, *The Future of Ideas* (2001); *Free Culture* (2004)**
- **Creative Innovation – core economic driver – Florida, *Rise of the Creative Class* (2002) – CC slogan “get creative”**
- **Peer to Peer Production and User Led Innovation - Y Benkler, “Coase's Penguin, or Linux and the Nature of the Firm”, (2002) 112 *Yale Law Journal* 369 – Collaborative Innovation**

Free and Open Source Software

- “The powerful insight that Richard Stallman and his advisers at the Free Software Foundation .. discovered was that if you want to structure open access to knowledge you must leverage off or use as a platform your intellectual property rights. The genius of Stallman was in understanding and implementing the ethic that if you want to create a community of information or creative commons you need to be able to control the way the information is used once it leaves your hands. The regulation of this downstream activity was achieved by claiming an intellectual property right (copyright in the code) at the source and then structuring its downstream usage through a licence (GNU GPL). This was not a simple “giving away” of information but rather a strategic mechanism for ensuring the information stayed “free” as in speech. It is on this foundation that we now see initiatives like the Creative Commons expanding that idea from open source code to open digital content.”: A Fitzgerald and B Fitzgerald *Intellectual Property in Principle* (2004) at [11.100].

Four main protocols

- **Attribution:** Other people may use, modify and distribute the work, as long as they give the original author credit.
- **Non-commercial:** Other people may use, modify and distribute the work, but for non-commercial purposes only.
- **No derivatives:** Other people may use and distribute the work, but can not modify it to create derivative works.
- **Share alike:** Other people may modify the work and distribute derivatives, but only on the condition that the derivatives are made available to other people on the same licence terms. This term can not be used with the **No Derivatives** term, because it applies only to derivative works.
- Need to mention Moral Rights (asserted) in Australian licence

Creative Commons is a nonprofit that offers a flexible copyright for creative work.

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music, sounds, speeches...

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photos, illustrations,
designs...

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movies, animations,
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1. Definitions

- a. **"Collective Work"** means a work, such as a periodical issue, anthology or encyclopedia, in which the Work in its entirety in unmodified form, along with a number of other contributions, constituting separate and independent works in themselves, are assembled into a collective whole. A work that constitutes a Collective Work will not be considered a Derivative Work (as defined below) for the purposes of this License.



Wired Magazine

- **Wired magazine has produced a compact disc where the work of artists and bands are distributed under Creative Commons licences. The Wired CD was released together with the November 2004 of Wired Magazine. Sixteen recording artists agreed to participate in this project and contribute their work for inclusion on the Wired CD.**
- **There are two different licences under which tracks on the Wired CD are distributed. Thirteen recording artists chose to distribute their work under the Sampling Plus Licence. Three recording artists chose to distribute their work under the Noncommercial Sampling Plus Licence.**

The Rules in Brief

Basically, there are five main rules that you need to know and agree to in order to be able to use the Creative Archive material. Please note that this summary is not a replacement for the Creative Archive Licence but an effort to introduce the key concepts.



1. Non-commercial

This means that you may use the Creative Archive content for your own personal use and for not-for-profit educational use but you can't sell or profit financially in any way from the use of the Creative Archive content.



2. Share-Alike

This means that the Creative Archive content is granted to you under the terms set out in the Licence and if you wish to use the content you must then licence anything you create or produce using the Creative Archive content (i.e a Derivative Work) under the same Licence. It's simple!



3. Crediting (Attribution)

It's your chance to make sure everyone knows what you've done, but you ALSO need to make sure that everyone who has contributed to a piece of content (a Derivative Work) is credited too. It's up to you how creatively you acknowledge others' contributions!



4. No Endorsement and No derogatory use

The Creative Archive content is provided to allow you to get creative with content, not for campaigning, soapboxing or to defame others! So don't use it to promote political, charitable, or other campaigning purposes and remember to treat others and their work in the way that you'd expect them to treat you and your work...with respect!



5. UK

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THREE CHERRIES

A highly visual, informative and amusing insight into arcade life. The film explores life inside the arcades, the machine and the heads of the compulsive player and professional.

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FILMMAKER [honey brothers](#) DURATION 3:33 m [MORE INFO >](#)

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FOURDOCS EDITOR

A seductively-edited montage that catches the razzle-dazzle of the slot arcade, the allure of the win and the reasons for the addiction. It uses the limited 'available light' of the actual machines to great effect and the monotonous organ-based soundtrack adds greatly to the hypnotic power of the subject. Classy text pinpoints the facts and is well-integrated with the overall narrative style.

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"Creative Commons is a non-profit that offers an alternative to full copyright." creativecommons.org

Briefly...

Attribution means:
You let others copy, distribute, display, and perform your copyrighted work - and derivative works based upon it - but only if they give you credit. **BY:**

Noncommercial means:
You let others copy, distribute, display, and perform your work - and derivative works based upon it - but for noncommercial purposes only. **\$**

No Derivative Works means:
You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it. **=**

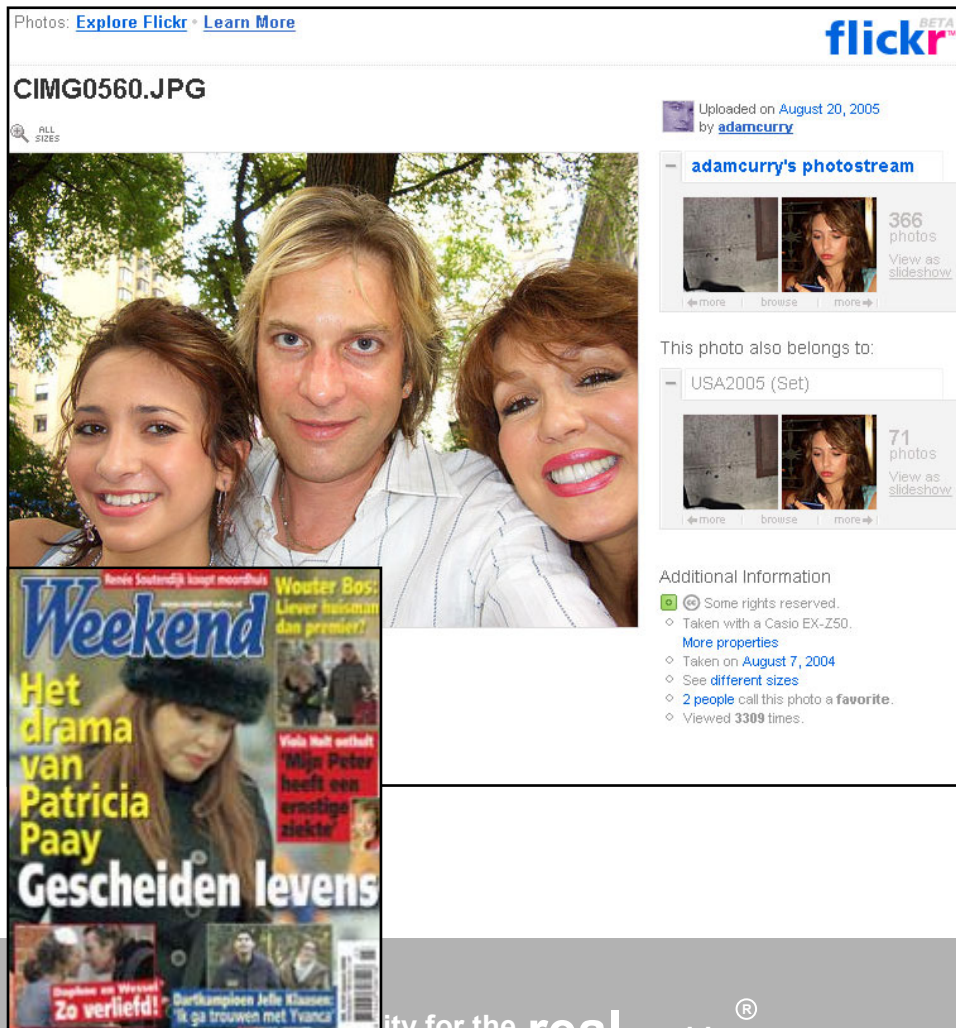
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You allow others to distribute derivative works only under a license identical to the license that governs your work. **cc**

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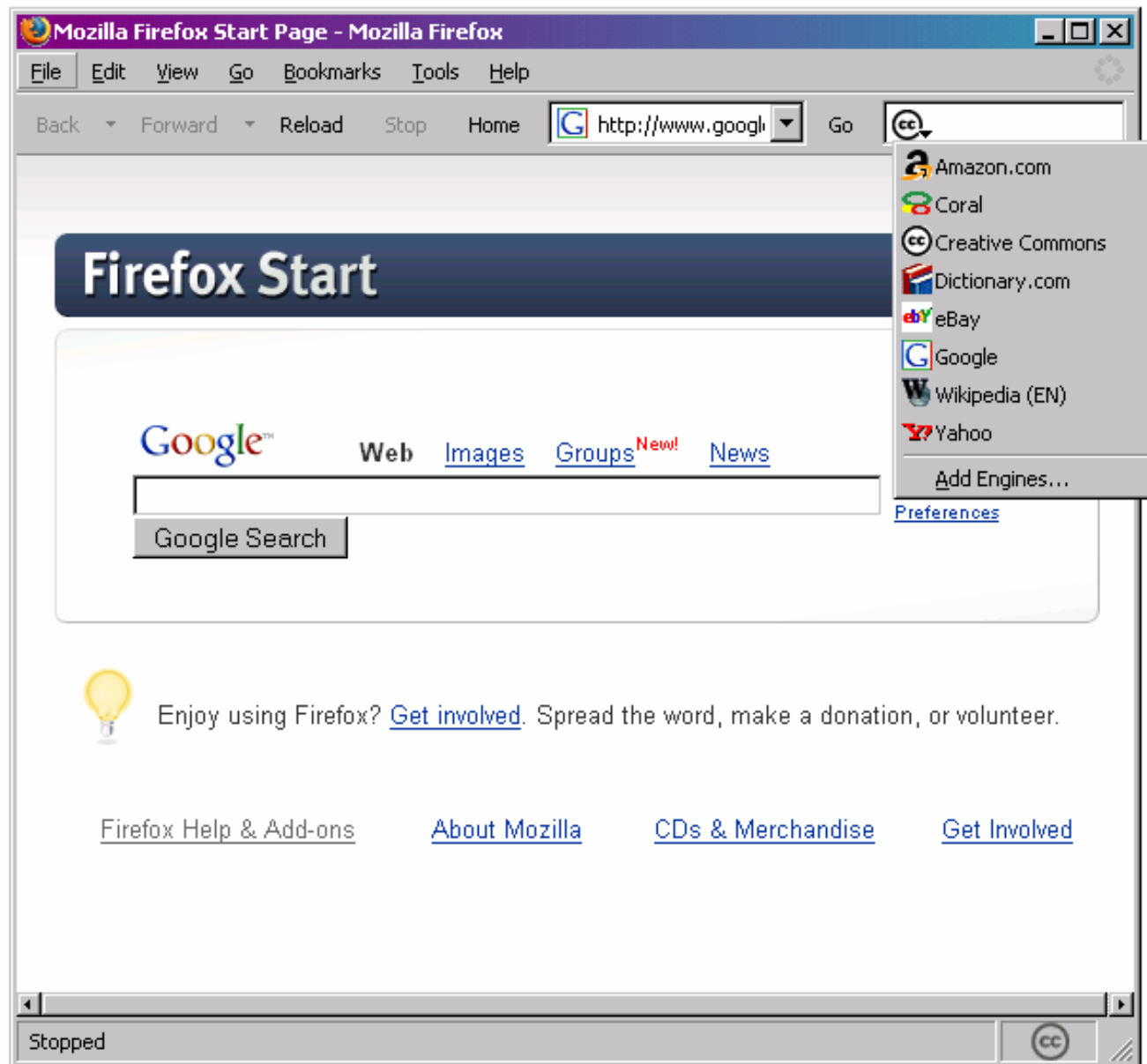
flickr.com

- Over 10 Million photos licensed under CC licences

Creative Commons win in Dutch Court – 09 March 2006



- Weekend magazine published four photos taken from Adam Curry's flickr photostream (BY-NC-SA)
- Dutch court upheld CC licence: "All four photos that were taken from www.flickr.com were made by Curry and posted by him on that website. In principle, Curry owns the copyright in the four photos, and the photos, by posting them on that website, are subject to the [Creative Commons] License. Therefore [the publisher] should observe the conditions that control the use by third parties of the photos as stated in the License."



CC Tools: ccMixer

- A free publishing tool offered by Creative Commons is ccMixer, a site that invites musicians to exercise their rights to rip, mix and mash-up under those Creative Commons licenses that allow derivative works and sampling. The site enables musicians to see both who has remixed their work and to display the work they have remixed in creating their own music. People can see the relationships between the sampled tracks—similar to a genealogy of creativity. (Mia Garlick – General Counsel CC)
- Fort Minor Remix Contest – Warner and CC

Application to Public Sector Information Management

- **Government Copyright Material**
- **Publicly Funded Research**
- **Open Education**
- **Public Funded Archives**
- **EU Directive on Reuse of and OECD Work on Public Sector Information (PSI) Management**
- **UK Common Information Environment (CIE)
– CC in the UK Public Sector**



Relationship to Copyright

- **Not anti-copyright**
- **Relies on and is complementary to copyright**
- **Aims to make copyright more alive active and accessible**
- **Mentioned in recent cases: *MGM v Grokster* (US Supreme Court); *Universal v Sharman* (Aust Fed Court) – proving the worth of innovative technologies**

Motivation for Sharing

- Ideologically and financially this may be acceptable – the most compelling example is government where information is ultimately owned by and for the people
- Open contenting one version of your material e.g. a draft (E Print) or a chapter may in fact be a strategy for enhancing the commercialised version of your content
- A wish to share with others for creative, educational and research purposes – peer production, collaborative innovation, e science/e research
- Publicity – what the free and open software movement calls “egoboo” or reputation within the open community which in some cases will be exploited commercially down the track
- Negotiability – through technologically implemented generic protocols that can be utilised with the click of a mouse
- “What is junk to one may be gold to another” – the idea that the off cuts or digital junk of one person may be the building blocks of knowledge and creative genius for another
- “indirect appropriation” – money, design and use of end product, pleasure or social profile gained through involvement in peer production - Benkler

Why is CC Important?

- Provides a facility for those that want to share copyright material lawfully to do so
- Model has tremendous capacity to profile creativity
- Facilitates collaboration (the new innovation) and annotation – e.g. CCMixer
- Links in with the growth of open access providing new sources of knowledge
- Open to all
- Allows you to release a NC version under CC and still commercialise any other version
- Blends with the creative and knowledge skills of the digital generation – serendipitous innovation – contemporaneous online negotiability – seamless access - reuse



Science Commons

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Head of School of Law QUT



Queensland University of Technology

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Motivating Factors

- Technology enhanced - Collaborative and open innovation; User and peer innovation; e Science/Research
- Tragedy of the anti-commons
- Development agenda
- Access to Knowledge (A2K) Treaty
- Broadest dissemination of knowledge; greater negotiability; time factors
- Bermuda Principles (1996) – HGP; NHGRI (2003)
- OA Declarations – Budapest, Bethesda, Berlin
- Communalism – as a norm of science- Merton (1973)

IP Involved

- The focus has been on: Copyright, Data related rights, Patent; PBRs



Science Commons

- “Our goal is to encourage stakeholders to create areas of free access and inquiry using standardized licenses and other means; a 'Science Commons' built out of voluntary private agreements.”
- "Because they were denied access to data, 28% of geneticists reported that they had been unable to confirm published research" (Journal of the American Medical Association Vol. 287 No. 4, January 23, 2002)
- Science Commons three projects:
 - Open Access Publishing
 - Licensing of research materials
 - Access to datasets



Science Commons

<http://sciencecommons.org/literature/>

- Open Access publishing
 - Encourage use of open licences for academic and scientific publications
 - Reduce transaction costs of negotiation copyrights in research
 - Consideration of needs of all stakeholders: commercial publishers, science and medical society publishers, universities, libraries and individual researchers.



Science Commons

<http://sciencecommons.org/licensing/>

- Licensing
 - Aims to explore standard licensing models to facilitate wider access to scientific materials
 - Although standard material transfer agreements exist, the licensing of materials remains a problem.
 - A complex set of interlocking licenses covering dozens of different materials imposes significant transaction costs simply to gain the opportunity to begin research.
 - A standard, open framework for managing material transfer can catalyse innovation
 - Extends beyond copyright into patents, technology transfer and intellectual property licensing



Science Commons

<http://sciencecommons.org/data/>

- Access to scientific data
 - Copyright extensions over databases and compilations may necessitate open licensing approaches
 - Ensure that mapping and archiving knowledge is not endangered by the zero-sum choice of "all rights reserved" and "no rights reserved."
 - Reduce waste where raw data are not made accessible - Implicit in data sets are answers to questions the researcher perhaps did not specify - answers that are a consequence of the throughput of the experiment.



Science Commons Projects

<http://sciencecommons.org/data/>

- The NeuroCommons
- Science Commons - Biological Materials Transfer
- Two examples of standardised but flexible agreements that have been developed to simplify scientific access.



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The NeuroCommons

<http://sciencecommons.org/data/neurocommons>

- “The NeuroCommons is a proving ground for the ideas behind Science Commons' Data Project. It is built on the legal opportunities created by Open Access to the scientific literature and the technical capabilities of the Semantic Web.”
- The NeuroCommons is a collaborative project between Science commons and the Teranode Corporation which builds upon open access scientific knowledge to create a semantic web for neurological research.



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The NeuroCommons

<http://sciencecommons.org/data/neurocommons>

- The aims of the NeuroCommons project are:
 - “To demonstrate that scientific impact is directly related to the freedom to legally reuse and technically transform scientific information - that Open Access is an essential foundation for innovation.
 - To establish a framework that increases the impact of investment in neurological research in a public and clearly measurable manner.
 - To develop an open community of neuroscientists, funders of neurological research, technologists, physicians, and patients to extend the NeuroCommons work in an open, collaborative, distributed manner.”



Science Commons - Biological Materials Transfer

<http://sciencecommons.org/licensing/scmta>

- “Complex licensing and contracts around the physical materials of science have created a world in which it is difficult for scientific investigators to define the terms under which their work is re-used.”
- “Science Commons’ Materials Transfer project brings together funders of neurodegenerative research, technology management professionals, and seasoned attorneys to address this problem.”



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Science Commons - Biological Materials Transfer

<http://sciencecommons.org/licensing/scmta>

- The Science Commons – Biological Materials Transfer aims to provide a standardisation of material transfer agreements and resolve key questions such as:
 - Who has the right to commercially exploit the material?
 - Who receives academic attribution from research generated from the material?
 - Who carries the risk of damages from the transfer and use of the material?
 - Who owns the intellectual property in the material and that which is derived from it?



Open Source Biotechnology

<http://rsss.anu.edu.au/~janeth/home.html>

- Janet Hope “Open Source Biotechnology”
- The rapid expansion of intellectual property rights over biotechnology research has instigated the open source biotechnology movement.
- Open source biotechnology is designed to counter fears that biotechnology research will be locked up unless measures are taken to preserve access to, and to enable researchers to utilise and build onto existing biotechnology research.



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Open Source Biotechnology

- Open source biotechnology is an extension of the open source software movement which aims to enhance and preserve open access to biotechnology research for researchers and the broader community.



Free Revealing in Biotechnology

<http://rsss.anu.edu.au/~janeth/home.html>

- Hope's argument of free revealing in biotechnology challenges the notion that innovation will only be supported by private investment if innovators can make a profit.
- Free revealing in biotechnology has two components
 - Maximising the use value of biotechnologies through free revealing; and
 - Translating the increased use value into economic value for the technology owner.



Maximising the use value of biotechnologies through free revealing

<http://rsss.anu.edu.au/~janeth/home.html>

- Value of a tool to its user is higher if the user understands how it works.
- The use value of a technology depends on its quality – this can be increased through open access.
- The use value of a technology depends on its availability and affordability – increased through open access - anyone can be a digital distributor.



Translating increased use value into economic value for the technology owner

<http://rsss.anu.edu.au/~janeth/home.html>

- Direct user benefits from improvements in the use value of the tool
 - Efficiency gains
 - Cost savings
- Non-user benefits
 - Enhance the appeal of complementary products
 - Provide alternative services eg training, consulting
 - Market positioner – establish and enhance the technology owners research and development profile



CAMBIA

<http://www.cambia.org>

- CAMBIA is an international, independent, non-profit research institute pioneering Biological Open Source (BiOS) and Informatics to support patent transparency located in Canberra, Australia.
- CAMBIA was founded by molecular biologist Richard Jefferson and for over ten years has been creating new tools to foster innovation and collaboration in life sciences.



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CAMBIA'S Activities

<http://www.cambia.org>

- Patent Lens
- BIOS (Biological Open Source) Licenses
- In house molecular biology research capabilities
– including the development of TransBacter, Gus, *GusPlus* and Diversity Arrays
- BioForge



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CAMBIA'S Patent Lens

<http://www.bios.net/daisy/bios/patentlens.html>

“CAMBIA's Patent Lens aspires to be a global resource for increasing patent transparency”

- CAMBIA'S Patent Lens, funded by the Rockefeller Foundation is designed to provide the necessary tools to make patents more transparent and enhance cooperation. The aim behind Patent Lens is CAMBIA'S belief that open innovation depends upon transparency in the patent system.



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Patent Lens provides access to:

- One of the world's largest free, full-text searchable integrated patent databases including PCT, US and EPO;
- Intellectual property tutorials;
- Information on patent policies; and
- The latest patent news and views.



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CAMBIA'S BiOS Initiative

<http://www.bios.net/daisy/bios/home.html>

- The BiOS, Biological Innovation for Open Society Initiative is designed to extend the concepts of open source software and distributive innovation to applications of life sciences to human and environmental well being.
- The BiOS Initiative utilises the Internet and open source to generate open access capabilities for innovation.
- The tools of the BiOS Initiative are Patent Lens, BiOS (Biological Open Source) license, and the BioForge.



CAMBIA'S BIOS Initiative

http://www.bios.net/daisy/bios/about_BiOS.html

- The BIOS Initiative is designed to foster and promote decentralised, cooperative innovation in the application biological technologies, through:
 - Intellectual property informatics and analysis;
 - Innovation system structural reform; and
 - Cooperative open access technology development activities.



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CAMBIA'S BIOS (Biological Open Source) Licenses

http://www.bios.net/daisy/bios/BiOS_licenses.html

“BiOS (Biological Open Source) licenses are designed to enable the sharing of the capability to use patented and non-patented technology, which may include materials and methods, within a “protected commons”. The license can support both freedom to operate, and freedom to cooperate.”



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CAMBIA'S BIOS (Biological Open Source) Licenses

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- BIOS Licences do not impose royalties, instead BIOS licensees must agree to binding conditions in order to obtain a license and access to the protected commons.
- The conditions are that any improvements must be shared and that licensees cannot appropriate the fundamental "kernel" of the technology and improvements exclusively for themselves.



CAMBIA'S BIOS (Biological Open Source) Licenses

http://www.bios.net/daisy/bios/BiOS_licenses.html

- In essence, the base technology remains the property of the person who developed it, but all licensees obtain access to improvements, and other information, such as regulatory and bio-safety data, shared by other licensees.
- To maintain legal access to the technology, licensees must agree not to prevent other licensees from using the technology and improvements in the development of different products.



The International HapMap Project

<http://www.hapmap.org>

- The HapMap Project Genotype Database aims to identify and catalogue genetic similarities and differences in human beings.
- HapMap will assist researchers to identify genes that affect health, disease, and individual responses to medications and environmental factors.
- All information generated by HapMap Genotype Database will be released into the public domain.



Excepts from the NIH/HapMap Click-wrap Licence

<http://www.hapmap.org/cgi-perl/registration>

2. You may access and conduct queries of the Genotype Database and copy, extract, distribute or otherwise use copies of the whole or any part of the Genotype Database's data as you receive it, in any medium and for all (including for commercial) purposes, ***provided always that:***
 - a. by your actions (whether now or in the future), you shall not restrict the access to, or the use which may be made by others of, the Genotype Database or the data that it contains;



Excepts from the NIH/HapMap Click-wrap Licence

<http://www.hapmap.org/cgi-perl/registration>

- b. in particular, but without limitation,
 - i. you shall not file any patent applications that contain claims to any composition of matter of any single nucleotide polymorphism ("SNP"), genotype or haplotype data obtained from the Genotype Database or any SNP, haplotype or haplotype block based on data obtained from the Genotype Database; and
 - ii. you shall not file any patent applications that contain claims to particular uses of any SNP, genotype or haplotype data obtained from the Genotype Database or any SNP, haplotype or haplotype block based on data obtained from, the Genotype Database, unless such claims do not restrict, or are licensed on such terms that that they do not restrict, the ability of others to use at no cost the Genotype Database or the data that it contains for other purposes; and

Excepts from the NIH/HapMap Click-wrap Licence

<http://www.hapmap.org/cgi-perl/registration>

- c. you disclose data obtained as a result of your access to and use of the Genotype Database only to other parties who have first confirmed to you in writing that they too are licensees under the terms of the International HapMap Project Public Access License and so are bound by equivalent terms and conditions to those that you have accepted under this License. If you were to include the details of the individual genotypes in a publication, you could not conform to this clause; therefore, you may not include in publications the data on genotypes of individual HapMap samples that you obtained from the Genotype Database. However, you may publish conclusions based on such data, you may cite the Project database as your source of the data so that others may obtain access to them on the same terms as you obtained them, and you may provide the individual genotypes supporting those conclusions to any individual who has confirmed to you in writing that s/he is a licensee under the terms of the International HapMap Project Public Access License.



Other Aspects

- Wellcome Trust and NIH funding requirements – regarding publication
- PubMedCentral <http://www.pubmedcentral.nih.gov/>
- Professor Arti Rai at Duke Law School “Open and Collaborative Research: A New Model for Biomedicine” (2006) – cautions against copyleft style licensing in certain circumstances <http://eprints.law.duke.edu/archive/00000882/>

Conclusion

- Open and Collaborative (Cumulative) Innovation on the back of technologically enhanced networks is leading the push for greater access and negotiability within the parameters of copyright, data and patent law

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