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# An Uncommon Presentation: Creative Commons at the 2012 LES Winter Meeting

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Viewpoints

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**An uncommon presentation: Creative Commons at the 2012 LES Winter Meeting  
Annemarie Meike, Ph.D., J.D.**

Have you noticed that the subject matter of our LES meetings is heavily oriented toward patent rights? Arguably, there is more IP business in the area of patents, but it is important to keep an eye on copyright, whether for the purpose of influencing software copyright policy, or observing the development of interesting business models. So it is with pleasure that I see Catherine Casserly of the non-profit organization, Creative Commons (CC) is our Luncheon speaker for the 2012 Winter meeting in Anaheim.

Sharing has become a facet of many new business models these days, and “commons” is often used in this context, engendering an idea of the common good. Although “common good” means different to different people, a potential seems to exist to turn the often quoted ‘60’s era “tragedy of the commons” on its ear.

What is the rationale for Creative Commons? Quoting from the CC website:

“Copyright was created long before the emergence of the Internet, and can make it hard to legally perform actions we take for granted on the network: copy, paste, edit source, and post to the Web. The default setting of copyright law requires all of these actions to have explicit permission, granted in advance, whether you’re an artist, teacher, scientist, librarian, policymaker, or just a regular user. To achieve the vision of universal access, someone needed to provide a free, public, and standardized infrastructure that creates a balance between the reality of the Internet and the reality of copyright laws.”

<http://creativecommons.org/about>

Creative Commons does not attempt to instruct users about copyright, their rights, or other possible license scenarios. Whether or not we agree with the above-stated premise, the fact is that CC is making an impact. Curious about how the non-intellectual-property-professional might view the CC licenses, I have taken a completely biased and totally

non-statistical sampling of amateur and professional photographers who use flickr®, a photo-sharing website. According to CC, flickr® has 200 million CC-licensed photos. One of my sample, a photography teacher, agrees with the CC premise that people who have grown up with the Internet have a different sensibility regarding privacy and intellectual property. Often young people assume that they have the right to use what they find on the Internet. Part of her instruction includes aspects of artistic plagiarism to encourage students to create original work. She noted,

Artists have been notoriously exploited by those more savvy about business for eons. I'm not so sure that it's a great idea to image share without compensation or the benefit of stricter copyright laws. Take the Obama Hope poster case, for instance. The artist who made the poster assumed it was his right just to use the photo that he probably found on the Internet. He didn't give proper credit, nor did he compensate the original photographer (photo agency) for its use until the whole matter was brought to court. Who would have known that his poster would become iconic and be used for multiple commercial purposes, including clothing and accessories? The problems created by this artist's decision to exploit the work of another grew exponentially. So, ultimately, I believe that the Creative Commons license is helpful in some ways, but opens up a can of worms regarding intellectual property rights and economic compensation.

Another user, an amateur photographer, wrote:

Yes, I know a bit about Creative Commons. The big concept behind it is that copyright is about restricting rights of user, while CC is about granting rights. As a creator, you can easily and explicitly grant rights to your users and this encourage reuse and mash ups. Having a common language for describing different frequent types of sharing helps create a simple way for creators to encourage the reuse of their content. I've used a CC license on some of my flickr® photos. Now, if you do a Google search for 'pond scum' you will find that someone has reused one of my photos and given me credit (as required by CC). I personally like the idea that I can encourage people to reuse my stuff in exchange for credit. I also like the fact that I can limit the reuse to non-commercial use, so anyone who will profit from my work needs to talk to me about a different license.

Now let's make a deal: I will ignore the fact that the "pond scum" in this photo was duck weed, not the algae that the re-user wanted to represent. In return, you will overlook the fact that in common parlance copyright seems to be bandied around as an alternative to a CC license. Even though we know that CC license users don't quite understand that a CC license is, in fact, made possible by copyright laws, let's focus on what is happening. In the above instance, an amateur photographer is able to access tools to make use of his

copyright, understand some of his options, make choices, and get what he wants without spending time and expense on legal help. These “shrink wrap” licenses probably do work for the majority of people posting photos on flickr®. Interestingly, fostering a community of people that agree on a consistent group of license terms succeeds in the creation of a searchable database. The larger the database, the more likely it will be used, and the more likely an amateur photographer might have a photo used and credit applied. Clarity in license terms encourages re-use with credit, which in many instances is all that an amateur photographer wants.

Perhaps most fascinating is my last sample, a budding professional photographer who has used flickr® to develop his business. He has used the CC license to develop a reputation for excellent photography, used that reputation to develop a following on flickr®, and developed his commercial sales through that following. In this era when the cult of personality is so strong, and the world can be searched with a few keystrokes, the value of a mere photo credit can be quite high.

In my view, Creative Commons is useful for something far more interesting and complex than a vision of universal access. It engenders a pathway for individuals to cultivate a personal brand. If we really want to have our collective fingers on the pulse of new business models today, we’ll need to expand our awareness into the nexus between personal rights and intellectual property rights. It’s great to see LES wade into the waters of copyright. I hope you will join me at what is sure to be an interesting lunchtime presentation by Catherine Casserly at our winter meeting in Anaheim.

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