

## Guidelines for Creative Commons Project Leads

need or innovation identified



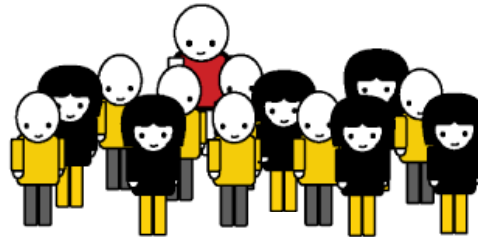
project lead chosen



project lead produces first draft



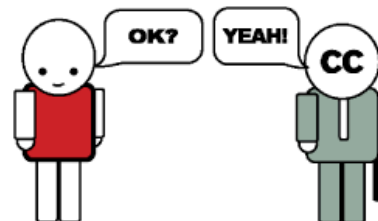
public discussion



project lead produces second draft



creative commons reviews draft



creative commons adopts innovation



## Guidelines for Creative Commons Project Leads

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Thank you for volunteering to be an Creative Commons project lead. Our project leads process marks an exciting turn for us, as we begin to hand the development of new projects over to friends, allies, and the general public. This doc provides a quick orientation to the process and a few pointers on running things smoothly.

### Overview of Process

As the illustrated outline of the project leads process (previous page) shows, the process of producing a license innovation. This overview offers a slightly more detailed description of those steps.

**(1) Need or Innovation Identified.** This is by and large a decision for the Creative Commons staff. Of course the inspiration for many of the projects we've taken on has come from the public (the sampling license comes to mind). But this first step -- the choice whether to open development of a new issue and all that entails -- comes from the central team.

**(2) Project Lead Identified.** Again, this is ultimately an internal matter, though we're of course always happy when volunteers come our way. Generally, our project leads will be experts in the particular field relevant to the license -- and more often than not, they'll be non-lawyers.

At this step, Creative Commons will also introduce the project lead to attorneys from Wilson Sonsini Goorich & Rosati or Cooley Godward, the two top-flight law firms that represent us *pro bono*. These lawyers will be on tap to help shape the draft, advise on policy, and answer tough legal questions. They'll largely be behind the scenes, answering the project leads questions, and will participate in the public discussion only seldom, leaving the responsibility for moving discussion along squarely in the project lead's hands.

**(3) Project Lead Produces First Draft.** Issue framed and project lead named, Creative Commons hands the controls over to the project lead, whose first task is to produce a first draft of the new license feature.

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It is important that this happen *before* public discussion begins in earnest. The best open-source, collaborative projects begin with a kernel.

**(4) Public Discussion.** Creative Commons announces the launch of a new project development and drives traffic toward the project email list. The project lead, with guidance from the lawyers on tap, encourages comment and criticism. Public discussion should last one month, though this might vary in special cases.

**(5) Project Lead Produces Second Draft.** The project lead, with the lawyers' help, revises the first draft in response to suggestions from the public. (Which suggestions deserve consideration is your decision.) Like the first draft, the re-draft is produced offline from the public discussion list, for efficiency's sake, though the project lead might want to consult the list with open questions from time to time.

**(6) Creative Commons Reviews Second Draft.** Pretty self-explanatory. In some cases, we might do this "review" on the public email list; in others, offline. Either way, we'll work with the project lead and the lawyers on tap to produce a result we're all happy with. It may be that we choose an issue or two

### Review of Roles: Who Does What

Creative Commons' will:

- a) frame the issue
- b) name the project lead
- c) set up an archived mail list for public discussion, and offer help running the list
- d) introduce the project lead to the attorneys of Cooley Godward or Wilson Sonsini
- e) participate on occasion in public discussion of the project to promote the project lead's efforts on our web site and through press announcements at the launch and close of development
- f) review the proposed final draft and decide to implement -- or seek further public discussion or legal research
- g) implement the final product

The project lead will:

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- a) produce the first draft, with the lawyers' help
- b) drive discussion on the public email list
- c) decide which issues raised on the discussion list should force a change to the first draft
- d) produce a second draft, with the lawyers' help
- e) propose the re-draft to Creative Commons
- f) lead a short second round of public discussion if necessary

### Guidelines for the Drafting Process Itself

The drafting and development process are the project lead's to run with. That said, here are a handful of guidelines that might help the final product work in harmony with our other licenses and projects.

**(1) What would *your* ideal copyright look like?** A few provisions of our current licenses are direct reflections of our dissatisfaction with some aspect of copyright law today. A good example: U.S. law says that simple file-sharing is a presumptively commercial use; our "no commercial use" option, by contrast, says that is not a commercial use unless money changes hands.

Does a particular provision of copyright peeve you? We encourage you to re-write it in your license. You are copyright czar for a month.

**(2) What would culture do?** The licenses are for use by all sorts of copyright holders across all sorts of media -- print, interactive web pages, images, film, music, sound recordings, etc. We've found that, given this, it can be tricky to draft a license that fits every last situation. Our solution has generally been not to bother trying.

Better said, when drafting a rule that could apply differently in different contexts -- an author's vision of "sampling" may differ from a DJ's, for example -- we've tended to choose language that defers to the custom or industry standard of the particular case in question. This approach is inspired by the Uniform Commercial Code and long-standing practice in contract law.

Here's a good example, from our current attribution provision:

*. . . You must keep intact all copyright notices for the Work and give the Original Author credit reasonable to the medium or means you are utilizing . .*

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That language in bold is key: “reasonable to the medium or means you are utilizing.” It defers to the context of the specific case, and it turns out to be an elegant way to build flexibility and, paradoxically, precision into the license. Whenever it is relevant in your own work, we encourage you to keep this strategy in mind.

**(3) Legal Advice = Bad News.** For our sake, and more important, your own, try to steer well clear of giving what could be confused as legal advice in your email discussion. Bar associations can be -- *surprise* -- sticklers for maintaining their guild-like monopolies, and getting them riled up would be a pain for all of us. The good news is that trouble is easily avoidable: the number one thing to keep in mind is never to offer advice to any person’s specific situation. Discuss to your heart’s content how a certain license provision might affect a hypothetical author, but simply do not respond to any questions from the public seeking guidance about a real-life problem someone is actually dealing with. For that type of question, simply say, “You should get a lawyer.” And, whenever in doubt, it never hurts to say “this isn’t legal advice” every once in a while.

“Improper legal advice” has never been a problem for Creative Commons, and we plan to keep it that way. We don’t mean to unduly scare you about the issue, as it is very unlikely to come up on discussion lists so focused on a single topic. But we do mean to get your attention -- on the slim chance that it does come up.

**(4) Lawyerspeak.** One of the most frequently asked questions about our licensing project is “Why doesn’t Creative Commons take a stand against legalese in its licenses?” Below is an excerpt from my answer to that question, from a memo early in the original drafting process. The reasoning is central to our model, so I ask you to please have a close look -- particularly if you’re rabidly anti-legalese.

*Many of you worried that the wording of our license drafts was too legalistic and inaccessible for a public license, and that the licenses’ warranties and other boilerplate provisions should be removed altogether. Your objections were both practical and philosophical: Potential licensors will be turned off by such language, which in any case is at odds with Creative Commons’ do-it-yourself, lay-friendly mission -- thus went the argument.*

*This is a serious and somewhat complicated issue that deserves a thorough airing. A starting point is simply to note that it is beyond*

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*dispute that ease-of-use by non-lawyers has been Creative Commons' top priority since its birth. It is, indeed, one of the company's reasons for being. Mindful of this, we gave our license drafts a stylistic pruning and will likely perform another before their release.*

*All that said, it is also important to note that another of Creative Commons' long-standing goals is to ensure that our licenses are legally legitimate, relevant, and enforceable -- that they stand the tests of time, public scrutiny, and even litigation. Without this assurance, our project risks becoming an exercise in wishful thinking rather than law.*

*The trick is achieving both aims -- ease of use and legitimacy -- with the least amount of compromise possible. It's our view that Creative Commons cannot achieve this joint goal by offering only simple, plain-language licenses with none of the language that makes them sturdy legal documents.*

*Certain provisions, forms, and formalities are essential to the licenses' relevance in the legal system. To put it another way, we should no more demand that the legal system not read and speak legal code than we would ask computers not to read and speak digital code. Both systems choke on any language other than their native tongues. Our task is not to try to change those languages, but to translate them for the public.*

*Moreover, the plain-language-only approach would risk blurring Creative Commons' organizational identity. Creative Commons wants to ease the public's access to well-crafted legal documents; it is not our goal to revolutionize the legal system itself. It is a lamentable fact that legal language is often requires an interpreter. (I would say the same about code.) But it's a fact, and one we as an organization should respect. A major part of CC's brand is that we are making do under the legal status quo, not trying to change it. (Not directly, anyway.) We are happy let others take on the age-old battle of democratizing legal code. Such a worthy fight is outside our scope, as our tech people might say -- as a matter of both principle and strategy.*

*This is where our layered approach to the licenses is crucial. We offer three expressions of each license. First, the human-readable version, which most users will interact with most of the time: a Commons Deed that uses icons and the least amount of (plain) language possible to explain the license's key provisions. Second, the lawyer-readable version: the Legal Code that can be parsed by courts and their officers. Third, the machine-readable expression: the metadata that allows browsers and other web apps to identify and sort the licensed works by their terms of use.*



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*We think that cleanly divorcing the Commons Deed from the Legal Code -- and presenting the Commons Deed as the primary point of reference -- is the only way to guarantee both accessibility and legitimacy.*

*In summary: Useless legalese has been cut from our drafts to the greatest extent possible. Unnecessarily confusing language has also be revised. The other kind of "legalese," however -- reps and warranties, limitations on liability, and much of our other legal boilerplate -- will largely stay.*

### Contact Information

Below is a list of contacts grouped by topic of inquiry. Please contact us with any question you might have -- it's the least we can do to thank you for helping us out. Sending your question to the right person below might simply help save a step or two. Thanks!

----- <i>Creative Commons corporate policy</i> <i>Talking to the press</i> <i>Project Leads process</i> <i>Experience with the original licenses</i> <i>Legal matters specific to CC</i> -----	Glenn Otis Brown <a href="mailto:glenn@creativecommons.org">glenn@creativecommons.org</a>
<i>Legal matters regarding license drafts</i> -----	Neeru Paharia <a href="mailto:neeru@creativecommons.org">neeru@creativecommons.org</a>
	Cathy Kirkman <a href="mailto:ckirkman@wsgr.com">ckirkman@wsgr.com</a>
	John Brockland <a href="mailto:jbrockland@cooley.com">jbrockland@cooley.com</a>
----- <i>Problems with archived mail lists</i> -----	<a href="mailto:mailman-admin@lists.ibiblio.org">mailman-admin@lists.ibiblio.org</a>
<i>Creative Commons website</i> -----	Matt Haughey <a href="mailto:matt@haughey.com">matt@haughey.com</a>
<i>Creative Commons metadata</i> -----	Aaron Swartz <a href="mailto:me@aaronsw.com">me@aaronsw.com</a>
<i>International issues</i> <i>Contacts overseas</i> -----	Christiane Asschenfeldt <a href="mailto:christiane@creativecommons.org">christiane@creativecommons.org</a>
<i>And don't forget this handy page</i>	<a href="http://creativecommons.org/faq">http://creativecommons.org/faq</a>