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Research





## *Creative Commons: A Legal Overview*



Associate Prof. Tatiani-Eleni Synodinou  
Ioanna Tzagaraki & Georgina Athanasiou

# Creative Commons

## Introduction to Creative Commons

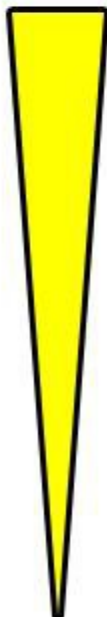
- Creative Commons, USA, 2002
- Standardized tools
  - grant permission to their copyright material



# LICENSES



MOST OPEN



LEAST OPEN



CC0



BY



BY



SA



BY



ND



BY



NC



BY



NC



SA



BY



NC



ND

# TERMS

display, perform and remix  
your name as requested by you

## Share Alike Works

contribute, display or perform  
your work

work only under a license  
you have chosen for your work

## Non-Commercial

display, perform or remix  
for commercial purposes only.

# Creative Commons

## Three "layers" of licenses

The licenses exist in three formats:

- *readable by machines*
- *readable by humans* (Commons Deed)
- *readable by lawyers* (Legal Code)



# Creative Commons

## Few words about Creative Commons

- *‘work alongside copyright’*
  - *‘some rights reserved’*



# Creative Commons

## Enforceability

*Curry v. Audax* Case no. 334492 / KG 06-176 SR,

- **Dutch Court**
  - JUSTICIABILITY □ Creative Commons as a *cause of action*

From 2006 till now



*never* been found *unenforceable*

# Creative Commons

## Ported vs unported : What does it mean? What are the problems of ported licenses?

One of CC's goals is ensuring that all of its legal tools work globally:

### Older Versions

- integration
- translation

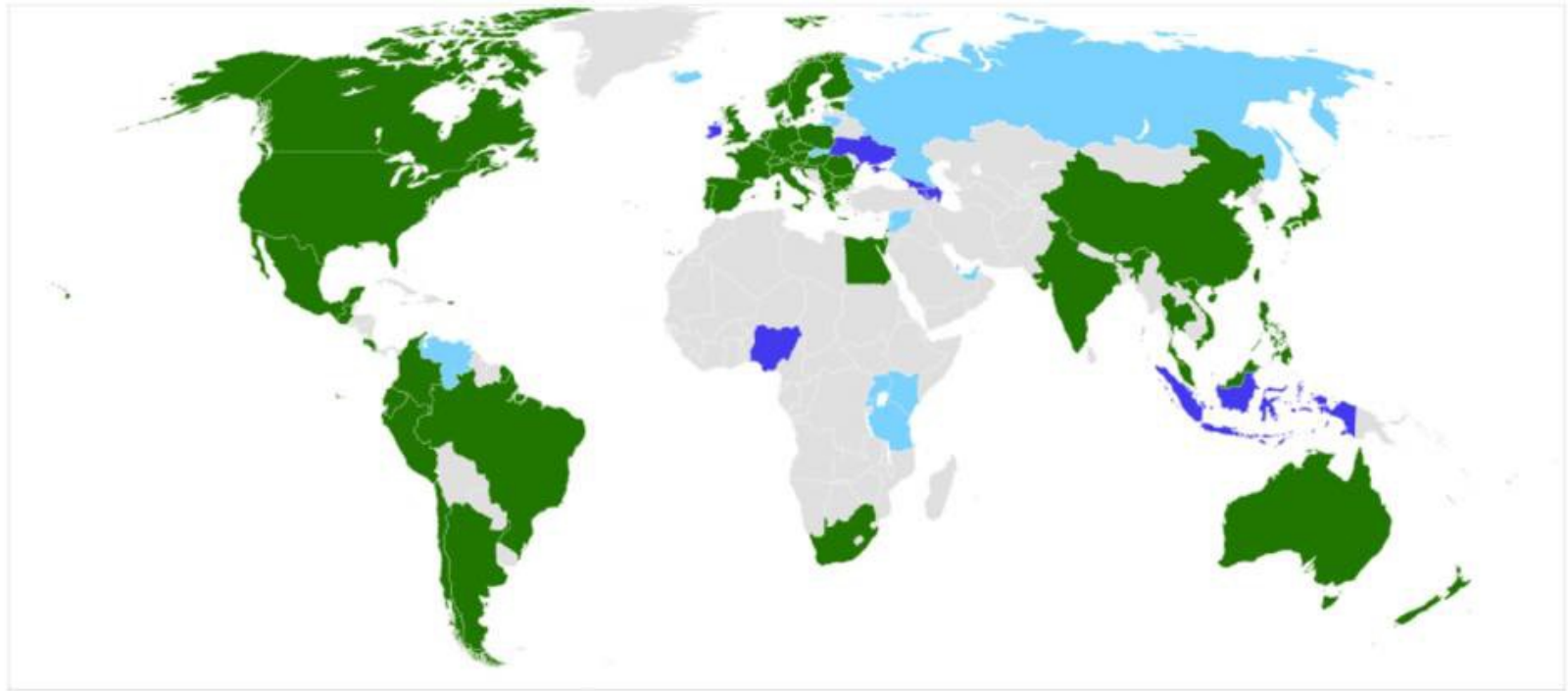
### 4.0 Version




- *no* integration
- translation





# Creative Commons



-  Licenses have been ported
-  Licenses are being ported
-  Licenses will be ported

# Creative Commons

## Contracts

*More binding*

## Licenses

*Permissions*

**Academia:** contract law perspective

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**Jacobsen v. Katzer, 535 F.3d 1373 (Fed.Cir. Aug 13, 2008):**

### **District court**

Only Contract law should be applied

### **Court of Appeal**

Copyright law can be applicable too

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## Unilateral Contracts

### **Offer**

Made to the whole world

### **Acceptance**

By performance



# Creative Commons

## Creative Commons in the Cypriot Jurisdiction

- **Chapter 149**

Articles 2(2)(b), 7, 8

### Offer

By applying the Creative Commons Legal Tools to the material

### Acceptance

By starting acting within the scope of the license



# Creative Commons

## Consideration

- no royalties
- *Jacobsen v Katzer:*

*“there should be recognized economic motives inherent in public licenses, even when profit is not immediate”*

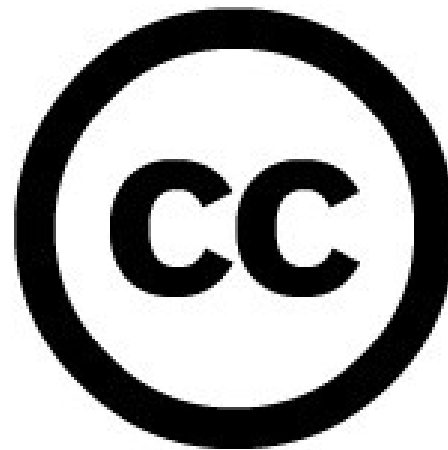


# Creative Commons

## Irrevocability

Is applied to *already licensed material*:

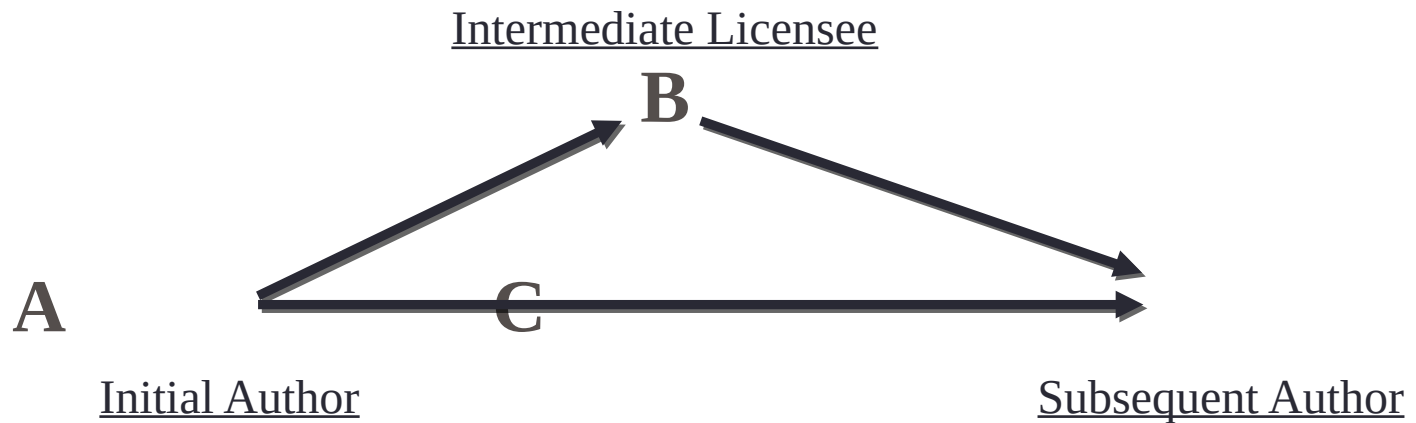
- *no termination* of existent contracts by *revocation*
- licensees will
  - *always* use the licensed material
  - *under the same terms* which granted them accessibility in the first place



# Creative Commons

## Privity

- Share Alike
- Derivatives



# Creative Commons

## Section 5 – Disclaimer of Warranties and Limitation of Liability.

1. Unless otherwise separately undertaken by the Licensor, to the extent possible, the Licensor offers the Licensed Material **as-is** and as-available, and ***makes no representations or warranties*** of any kind concerning the Licensed Material, whether express, implied, statutory, or other. This includes, without limitation, warranties of ***title, merchantability, fitness for a particular purpose, non-infringement, absence of latent or other defects, accuracy, or the presence or absence of errors, whether or not known or discoverable***. Where disclaimers of warranties are not allowed in full or in part, this disclaimer may not apply to You.
2. To the extent possible, ***in no event will the Licensor be liable*** to You on any legal theory (including, without limitation, negligence) or otherwise for any direct, special, indirect, incidental, consequential, punitive, exemplary, or other losses, costs, expenses, or damages arising out of this Public License or use of the Licensed Material, even if the Licensor has been advised of the possibility of such losses, costs, expenses, or damages. Where a limitation of liability is not allowed in full or in part, this limitation may not apply to You.
3. The disclaimer of warranties and limitation of liability provided above shall be interpreted in a manner that, to the extent possible, most closely approximates an absolute disclaimer and waiver of all liability.



# Creative Commons

## Exclusion Clauses in Consumers Contracts

- Are licensees considered consumers in law?  
(directive 93/13/ec, Act 93(I)/1996)
- **Directive 93/13/ec, art. 3(1):**

An exclusion clause is unfair if:

- *Not individually negotiated*
- *Causes significant imbalance*
- *To the detriment of the consumer*



# Creative Commons

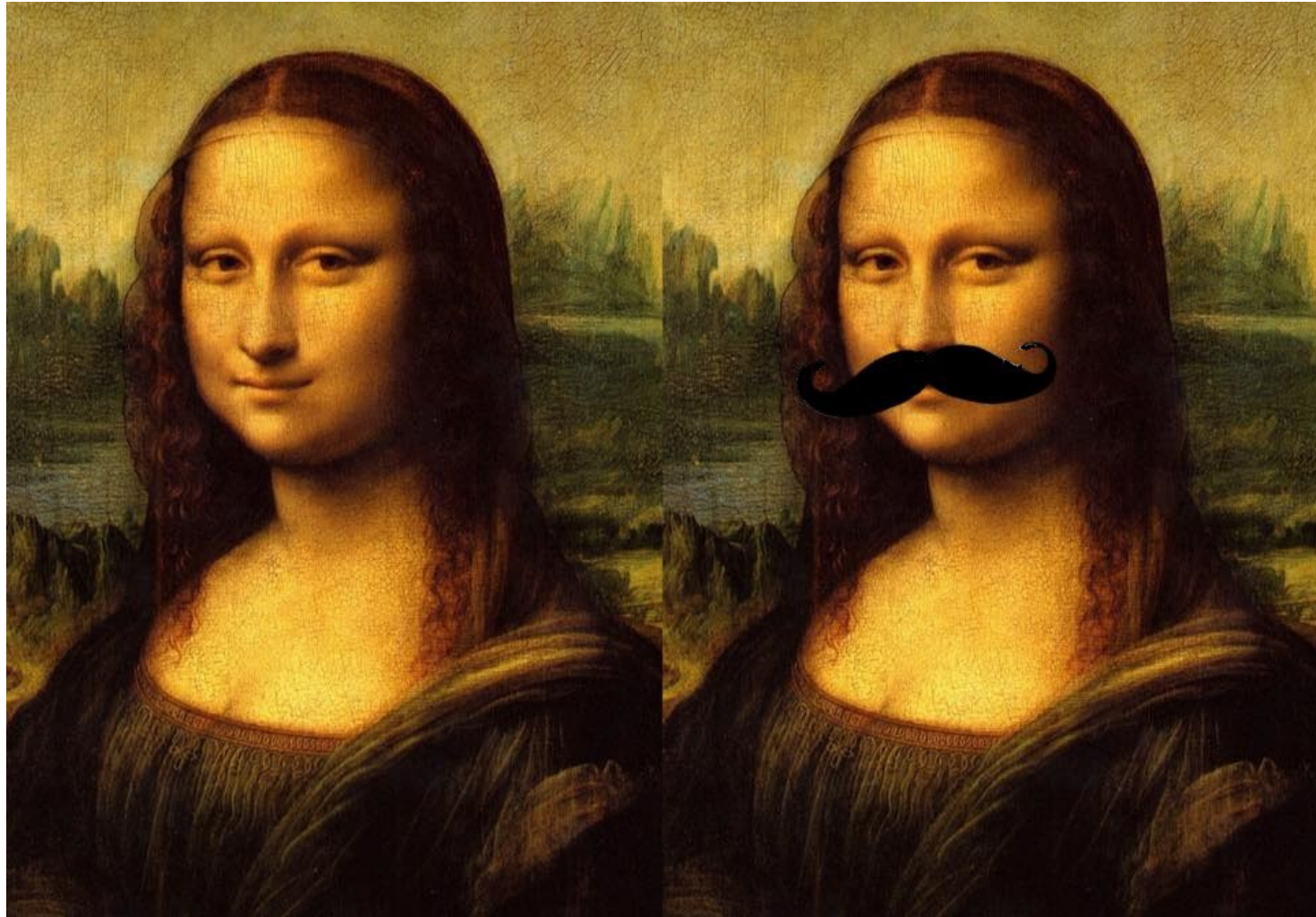
## Moral rights

Art. 7(4) Act 59/1976, art. 6bis Berne Convention

- the *attribution* right
  - the *integrity* right
- 
- **Waivable**  
(Canada, United Kingdom, United States)
  - **Inalienable**  
(France, Germany, Italy, Greece)



# Creative Commons



# Creative Commons

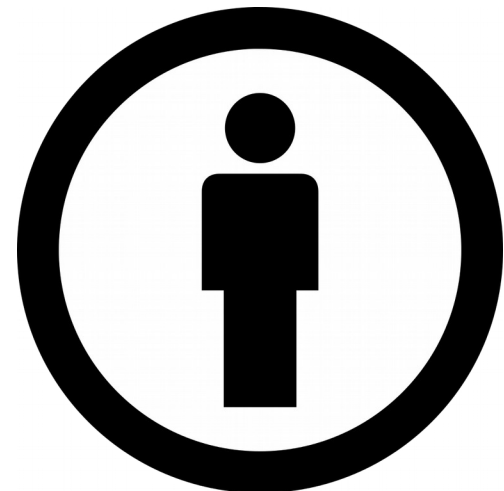
## Attribution Right – (Name Reference)

**The right of the author to *claim authorship* over his creation**

- *Mandatory* to mention the name of the author  
→ USA: *Non Attribution*

- Creative Commons Guidelines:

[https://wiki.creativecommons.org/wiki/Best\\_practices\\_for\\_attribution](https://wiki.creativecommons.org/wiki/Best_practices_for_attribution)



# Creative Commons

## Integrity right

**The right of the author to protect his honor or reputation\_**

- Violation of the spirit or essence of the project
- Affect the original author's honor or reputation



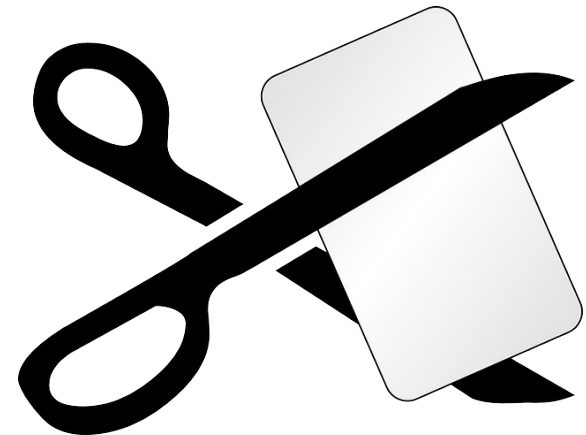
**The creator keeps the power to maintain the integrity of his work.**



# Creative Commons

## Integrity Right Protection Example

- Picture A
  - Modification by cut
  - Possible integrity right violation





# FOSTER

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**Thank you for your time!**

