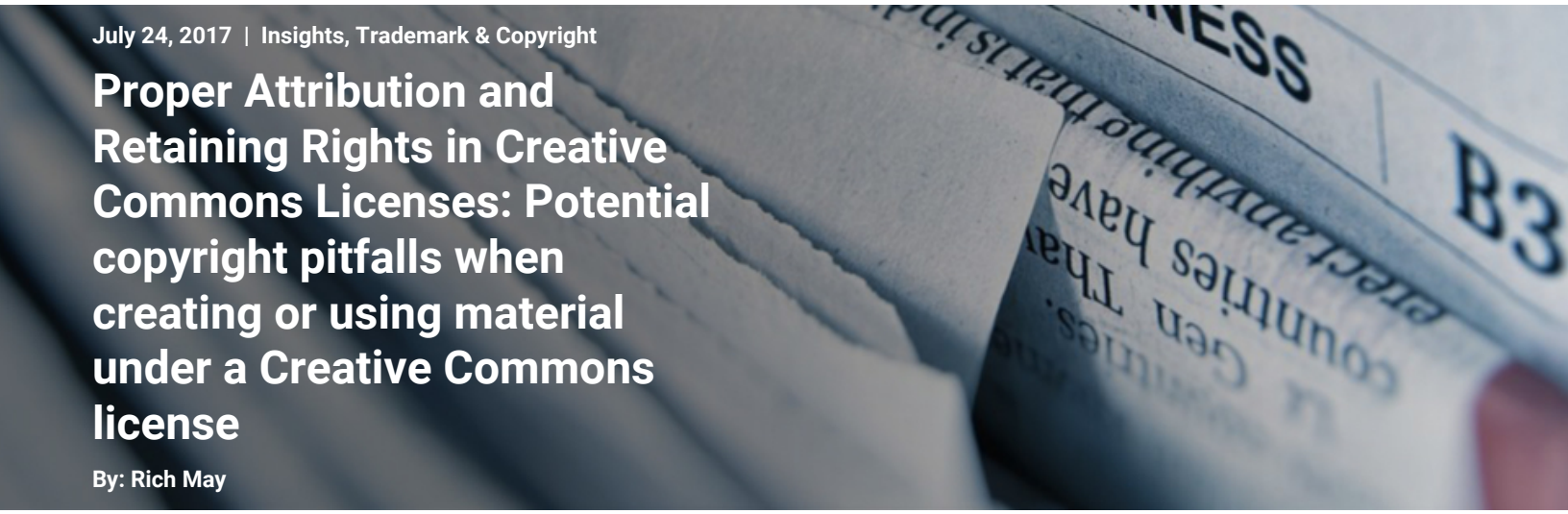


July 24, 2017 | Insights, Trademark & Copyright

Proper Attribution and Retaining Rights in Creative Commons Licenses: Potential copyright pitfalls when creating or using material under a Creative Commons license

By: Rich May

Since 2002, Creative Commons has published and maintained a selection of free-to-use copyright licenses. The concept – to make things easier for creators and consumers by creating "a usable commons, powered by collaboration and gratitude" – is part of the broader open-source movement which has pushed back against traditional copyright laws.



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Though popular and successful, these licenses provide both creators and consumers deceptively broad latitude, unintentionally creating potential copyright pitfalls.

Creative Commons licenses are generic in form and are intended to be easy to use: When applying a Creative Commons license, simply select from a menu of options and apply the perfect license to your work. On the other side, content distributed under Creative Commons licenses provides consumers with a library of content which is (assumed to be) freely available for reuse subject to minimal conditions. No headache or legal work required! Despite this apparent ease of use and reuse, both creators and consumers should be aware of a variety of copyright pitfalls which can plague even Creative Commons licenses. Two related pitfalls are proper attribution and retained rights.

When licensing content under Creative Commons, it is tempting to pick an option and move on. However, a creator must still consider the proper attribution of third party rights. If a creator's work includes any content licensed by a third-party – under either more 'traditional' copyright laws or a Creative Commons license – the creator must be careful that such material is actually available for the creator's intended use. Even Creative Commons licenses differ on what kinds of uses are permissible. For instance, a standard Creative Commons restriction is that any reuse be "Non-Commercial." If the licensed content is available for the creator's intended use, it still likely requires additional "marking" for proper attribution. That means the creator must label each instance of third-party content that may not be available for reuse under the same terms as the rest of the work. For example, most Creative Commons licenses permit reuse but require attribution. Every time a new creator uses material that requires attribution, that creator must properly

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identify the original license holder. To alert subsequent consumers to the existence of such third-party material, the creator should also include a warning in the creator's own copyright notice.

Furthermore, a creator can choose to assign different levels of permissions and restrictions within a single work. For example, if a portion of a creative work is particularly valuable or unique, the creator may want to apply a heightened restriction to that material, prohibiting its reuse. This can be done even when using Creative Commons licenses. If the creator chooses to do so, further marking is required. Consumers of content distributed under Creative Commons licenses must be conscious of these potential restrictions, and aware that rights of reuse can vary, even within a single piece of work.

Proper attribution and different levels of copyright restrictions, even within a single piece of work, can quickly create complications, despite the best efforts of Creative Commons. The interplay between Creative Commons licenses and traditional copyright law can especially lead to these problems. Both creators and consumers must be aware of these potential pitfalls, and thoughtful in their use of licenses and licensed materials.

Anyone with questions on Creative Commons licenses can contact Rich May, P.C. attorney Nathaniel Donoghue.

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