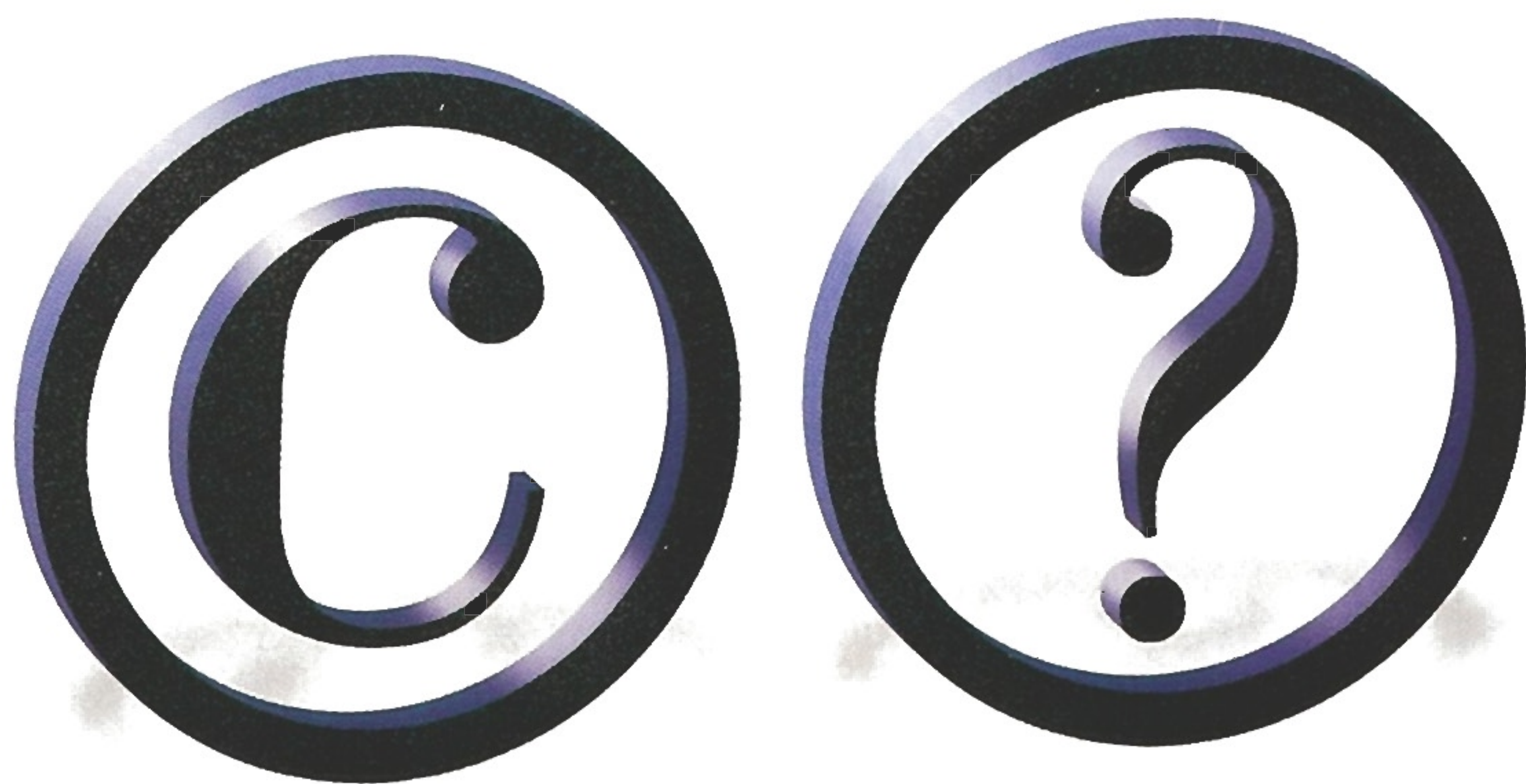


# Creative Licence



Simon Trask

**T**he traditional approach to copyright can be summed up in three words: All Rights Reserved. In law, copyright owners are granted exclusive rights in the owned work for a set period of time (50 years in the case of sound recordings in the EU), and these include the right to copy the owned work and to issue copies to the public. Yet in recent years, computer technology has made it possible for the public to easily copy and share copyrighted works worldwide. The music industry, which has felt the brunt of these technological changes, has responded with increasingly restrictive technological and legal measures — think copy-protected CDs, lawsuits against both peer-to-peer file-sharing services and individual music fans, and industry lobbying of governments for more protective intellectual property laws. It's hardly surprising, then, that there's a growing antagonism between the industry and its customers.



Creative Commons chairman (and co-founder of the movement) Lawrence Lessig.

## Creative Commons, Copyright & The Independent Musician

**As the music industry struggles to adjust to the growing effects of the Internet on sales, even traditional concepts such as copyright are being reconsidered. We examine the Creative Commons movement and explain how it could be useful to musicians everywhere.**

Meanwhile, the Internet is opening up new opportunities for musicians and other artists. But opportunities also bring with them challenges, and one such challenge is to consider whether All Rights Reserved copyright is the best way to establish a legal usage relationship in the age of the Internet.

### The Commons Touch

In 2001 a group of US Internet legal and intellectual property experts, as well as other interested parties, decided that a more flexible approach to copyright was needed. Instead of All Rights Reserved, they proposed *Some Rights Reserved*. To this end, they established a non-profit corporation called Creative Commons (or CC) to draft a set of licences which could be used to 'modify' All Rights Reserved. The first such licences were introduced in December 2002.

Stanford Law Professor and CC chairman and co-founder Lawrence Lessig is an impassioned advocate of an open creative culture. A prominent writer and speaker on the topic, Lessig has three books to his name, the most populist of which is his latest, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (ISBN 1594200068). As well as being available for sale in hardback form, the book can also be downloaded for free in a variety of digital formats and 'remixes' under a Creative Commons licence at <http://free-culture.org/freecontent>.

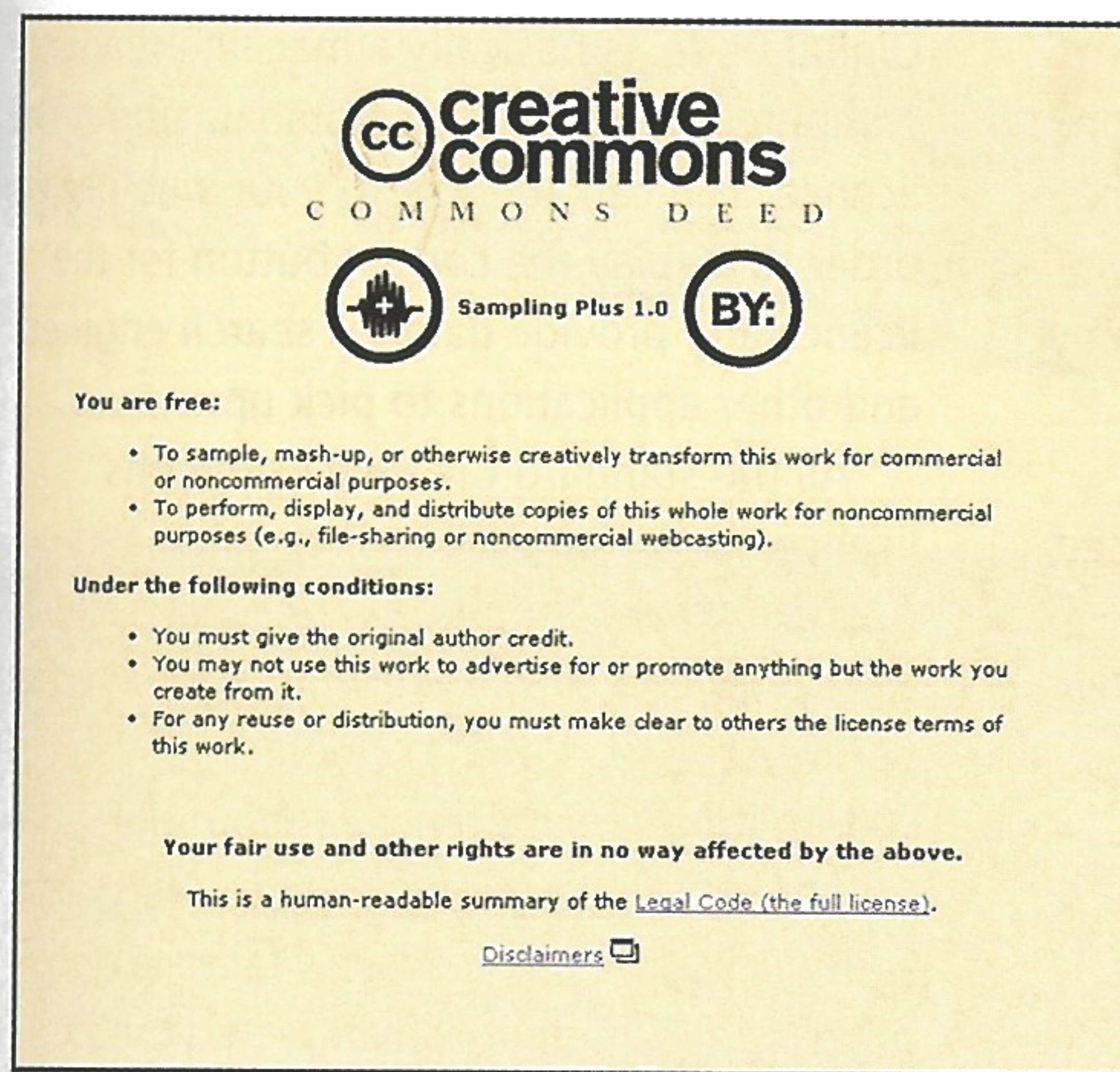
The central idea of Creative Commons is that copyright owners can, by attaching a CC licence to their works, explicitly and automatically give certain rights to licensees (ie. anyone who accesses their work) while reserving certain other rights to themselves. Hence 'Some Rights Reserved'. Creative Commons is not about giving up copyright. Rather it's about introducing a more flexible way of managing the rights embodied in copyright. So, as a musician owning the rights to your music, you can make choices about what others can and can't do with it.

CC licensing is not specific to particular types of creative endeavour — the content could be a music track, a video, a photograph, a white paper, a manual, or a web-based diary (or 'blog', as they've become known, from 'web-log'). In some blog software, such as *Blogger* and *Movable Type*, the ability to choose a CC licence is a built-in feature.

### An Open Culture?

Many independent music community sites are starting to offer Creative Commons licensing. Dance Industries, DMusic, Garageband.com (nothing to do with Apple's software), Mac Jams and Soundclick have all introduced CC licensing. For instance, tracks on Dance Industries are made available under a CC Music Sharing licence, while Garageband.com offers the Music Sharing licence as an option for all songs uploaded to its web site. Mac Jams, which is an on-line community for users





[Learn how to distribute your work using this license](#)

One of the Creative Commons licences available for download from the main site, <http://creativecommons.org>.

of Apple's *Garage Band* software, requires that everyone who submits a song to the site licenses it under a Creative Commons licence, while DMusic and Soundclick both offer CC licensing as an option.

Soundclick, which says it sees about 70,000 track uploads per month, reports that over 30,000 tracks were CC-licensed during the first month the option was available. Another site which offers Creative Commons licensing is ElectroBel, a web site for the Belgian underground electronic music community. And Streamcast Networks, owner of the peer-to-peer application *Morpheus*, which searches multiple peer-to-peer networks, says it will make it easier for users to find CC-licensed music.

Labels, too, are starting to utilise CC licensing. The Loca Records and Magnatune labels — both featured in boxes later in this article — release material exclusively under CC licences. Opsound, which describes itself as "a record label and sound pool using an open-source, 'copyleft' model", makes all material in the sound pool available under a CC Attribution-ShareAlike licence. Meanwhile, Textone, which is a combination on-line electronic music magazine and net-based label, licenses all its content under the CC Music Sharing licence; their site also includes an article titled 'The case for Creative Commons'.

Musicians adopting Creative Commons range from sample collagist Vicki Bennett (People Like Us) to veteran musician Roger McGuinn of The Byrds, who makes his recordings of traditional folk songs available for download under a CC Music Sharing licence.

The latest recruit to the Creative Commons cause is none other than

entrepreneur Stelios Haji-loannou of easyJet fame. Stelios had a run-in with the BPI in 2003 after his easyInternet cafes allowed customers to download free music off the Internet and burn it to CD. As a result he decided to set up an on-line music service. Currently under development, easyMusic will feature two sections, labelled Copyleft and Copyright. The Copyright section will feature All Rights Reserved music, ie. major- and indie-label releases, while the Copyleft section will feature unsigned artists, with tracks licensed under a non-commercial CC licence.

## Permission To Sample

This year has seen the introduction of three CC Sampling licences, specifically devised to enable musicians to give permission upfront for their tracks to be sampled. Leading lights in the development of these licences were

## The Creative Commons Licences

### THE SIX '2.0' LICENCES

- Attribution.
- Attribution-NoDerivs.
- Attribution-NonCommercial-NoDerivs.
- Attribution-NonCommercial.
- Attribution-NonCommercial-ShareAlike.
- Attribution-ShareAlike.

### THE THREE SAMPLING 1.0 LICENCES

- Sampling.
- Sampling Plus.
- NonCommercial Sampling Plus.

### OTHERS

- CC-GNU GPL.
- CC-GNU LGPL.
- Developing Nations 2.0.
- Founders' Copyright.
- Public Domain.
- Music Sharing (Attribution-NonCommercial-NoDerivs 2.0).

In addition, under the iCommons initiative, many countries are either developing or have developed their own localised versions of the standard global CC licences. Nine countries have already completed the process and released their own versions, among them Austria, Brazil, Canada, Japan and Taiwan. As I write this, the UK is in the final stages of developing its own versions.



► veteran sample collagists Negativland, who achieved notoriety in the early '90s when they were sued by none other than U2. I can recommend reading the articles at [www.negativland.com/edge.html](http://www.negativland.com/edge.html) and [www.deuceofclubs.com/write/negativl.htm](http://www.deuceofclubs.com/write/negativl.htm) for an understanding of where the CC Sampling licences are coming from. Negativland led the public discussion process in the drafting of the sample licences.

Another musician who was thinking along the same lines and has become a Creative Commons advocate is Gilberto Gil, who as well as being one of Brazil's best-known musicians, is also its Minister of Culture in the government of Brazil's socialist President Lula da Silva! In September, Gil played a benefit concert for Creative Commons in New York with former Talking Head David Byrne — another Creative Commons advocate — and Gil and Byrne have contributed a track each to a CD which comes with the November 2004 edition of *Wired* magazine. All 16 tracks on the CD, which also features artists such as the Beastie Boys and Public Enemy's Chuck D, have been made available under CC Sampling licences — which means that anyone is free to sample from them. Some of the artists have used a licence which enables commercial use, while others are only non-commercial.

## Express Yourself

Creative Commons offers a number of licences to choose from. Essentially there are

six standard licences and nine special-purpose licences (listed in the box on the previous page). The six standard offerings are version 2.0 licences, introduced in May last year; the original 11 version 1.0 licences are still available, although six of them have the same licensing elements as the six 2.0 licences, which update them in a number of ways.

Creative Commons licences are expressed in three ways: a Commons Deed, a Legal Code, and a Digital Code. The Commons Deed is a plain-language summary of the licence which combines icons and concisely expressed terms to let you see at a glance what rights are granted and what rights reserved. The Legal Code is the document which expresses the licences in legal terms, which means it's wordier and uses lots of lawyerly turns of phrase. Having said that, the Legal Code documents are by no means impenetrable to non-lawyers. In fact, they're quite clearly and succinctly expressed, and not particularly lengthy. That's good, because you do need to read them to get a fuller picture of the terms of each licence, including the restrictions. But ultimately, if you don't feel comfortable that you understand all the implications on a legal level of licensing work under a Creative Commons licence, it's obviously sensible to get a lawyer to interpret them for you. I'm not a lawyer myself, and this is as good a place as any to state that nothing in this article is given or intended as legal advice!

The third expression of each licence, the Digital Code, is basically a machine-readable computer file containing metadata about the licence. You can add this to your web page in order to display the correct button for the licence and provide data for search engines and other applications to pick up.

All the standard Creative Commons licences have certain baseline rights and restrictions in common. Every licence allows the licensee to copy, distribute, display, and perform the work (for example, by web-casting). Each licence, at both the Commons Deed and Legal Code levels, also announces that the licensee's fair use and other rights are in no way affected by the licence — in other words, the licence doesn't offer fewer rights than are granted under copyright law. Another baseline requirement is that for any re-use or distribution of a work, the licensee must make clear the licence terms of the work in question.

It's important to understand that Creative Commons is about enabling works to freely circulate on a legal basis while preserving the owner's copyright. Part of the reasoning behind CC licensing is to put downloading and file-sharing on a legal footing. If you CC-license a track, you're licensing people the right to download it and to share it over peer-to-peer networks. What's more, the licence for that particular track lasts as long as the track's copyright duration; the granted rights can only be withdrawn from a licensee

## Creative Commons & Record Labels: Loca Records

Brighton-based electronica label Loca Records has adopted an alternative approach to copyright from the outset. Formed in 1999, before Creative Commons existed, the indie label made its first four releases available under the GNU GPL 'copyleft' licence, which is more normally associated with open-source software.

"It was an experiment more than anything else, just to go through the processes really" says label co-founder and MD David Berry, a musician who records for Loca under the name Meme. Now an enthusiastic advocate of the open-source, 'copyleft' approach, Berry has also co-authored the Libre Society manifesto, essentially a 'call to arms' against the ownership and control of creativity by big business interests.

"We'd all had some involvement with the majors and got pretty pissed off with them, so we decided to try to do it a different way, to see what happened. It was almost a moral norm, we were trying to say 'Use this; if you want to sample it, feel

free. We're not going to hound you to your death.'"

For their fifth release, Loca moved from the GPL to the Electronic Frontier Foundation's Open Audio licence. Berry then discovered Creative Commons when he heard Lawrence Lessig speak at a conference in Oxford, and Loca has switched to using the Creative Commons Attribution-ShareAlike 1.0 licence for all its subsequent releases.

"Essentially we were trying to get a licence very similar to the GPL, a sort of copyleft licence, and we found the Attribution-ShareAlike licence. It's a 'viral' licence, it states that if you wish to use the music you yourself have to open your music. It creates an amazing domain of openly available music that we can all use freely. And that means it's very unlikely that someone's going to exploit your work in a really horrible way, because ultimately you can re-use their music."

Berry says a US open-source compilation label have included a track from Loca artists Maz Plant

Out on one of their releases. "We're more than happy about that, because we think it raises the profile both of Maz Plant Out and our label. Part of the joy of what we're doing is raising the profile of bands we really like. But ultimately we're a small label, and we don't ever envisage doing huge runs. We'll do our pressing of 1000 copies and that's it; the release is deleted when it runs out, and we move on to the next one. If some other label wants to plough 10,000 pounds into pressing Maz Plant Out records, that's fantastic."

So does Berry feel that the Creative Commons open licensing concept is scaleable beyond small independent labels? "Four or five years ago people were saying Linux was only small-scale, but now it's challenging Microsoft," he replies. "I'm not going to rule out the possibility of a massive open source-based label coming along and using Creative Commons licences so well that they're very successful. Obviously the business model has to change, it has to stop being so



David Berry (aka Meme), Managing Director of Loca Records and Creative Commons advocate.



draconian. The majors really do need to rethink. Criminalising your audience is absolutely counter-productive."

**W** [www.locarecords.com](http://www.locarecords.com)

**W** <http://creativecommons.org/licenses/by-sa/1.0>



who breaks the terms of the licence. You can, however, also release the work under different licence terms.

## The Four Elements

The six standard Creative Commons licences use from one to three licence elements, selected from four available elements:

Attribution, NoDerivs, NonCommercial, and ShareAlike. Attribution is common to all six 2.0 licences. There are several 1.0 licences which don't include the Attribution requirement, but Creative Commons decided to drop them in the 2.0 round of improvements, because stats indicated that 97-98 percent of CC-licensed works used the Attribution element.

Basically, Attribution says that the licensee must give you credit as the original author of the work. They can't pass it off as their own, and if they make a derivative work (where permitted) they have to credit you for your contribution.

Which brings us to NoDerivs. If you don't want anyone to make any use of your work beyond listening to it and copying and sharing it, then you need to choose a licence which specifies NoDerivs. Incidentally, the synchronisation of a music- or sound-based work to a moving image is considered derivative for the purposes of the licence!

The third element is NonCommercial. If you don't want anyone to make money off of your work without first doing a deal with you, then you need to choose a licence which specifies NonCommercial. The Commons Deed simply states: "You may not use this work for commercial purposes." The Legal Code, as you would expect, is more wordy on the subject of commercial use: the licensee can't use the work "in any manner that is primarily intended for or directed toward commercial advantage or private monetary compensation." It also says file-sharing is OK, "provided there is no payment of any monetary compensation in connection with the exchange of copyrighted works." In addition, depending on whether or not you select the NonCommercial element, the Legal Code has a section on performance, mechanical and web-casting rights and statutory royalties where you as licensee either waive or reserve the exclusive right to collect, either individually or via a relevant collecting society, any royalties for the work. Interestingly, Textone, while using a licence with a NonCommercial element, explicitly state at one point on their web site (but not next to the licence button) that they allow playback and mixing of their releases during a for-profit DJ performance "since so much of the underground scene is dependent on DJ/performance fees for subsistence."

The final, fourth licence element is

## Creative Commons & Record Labels: Magnatune

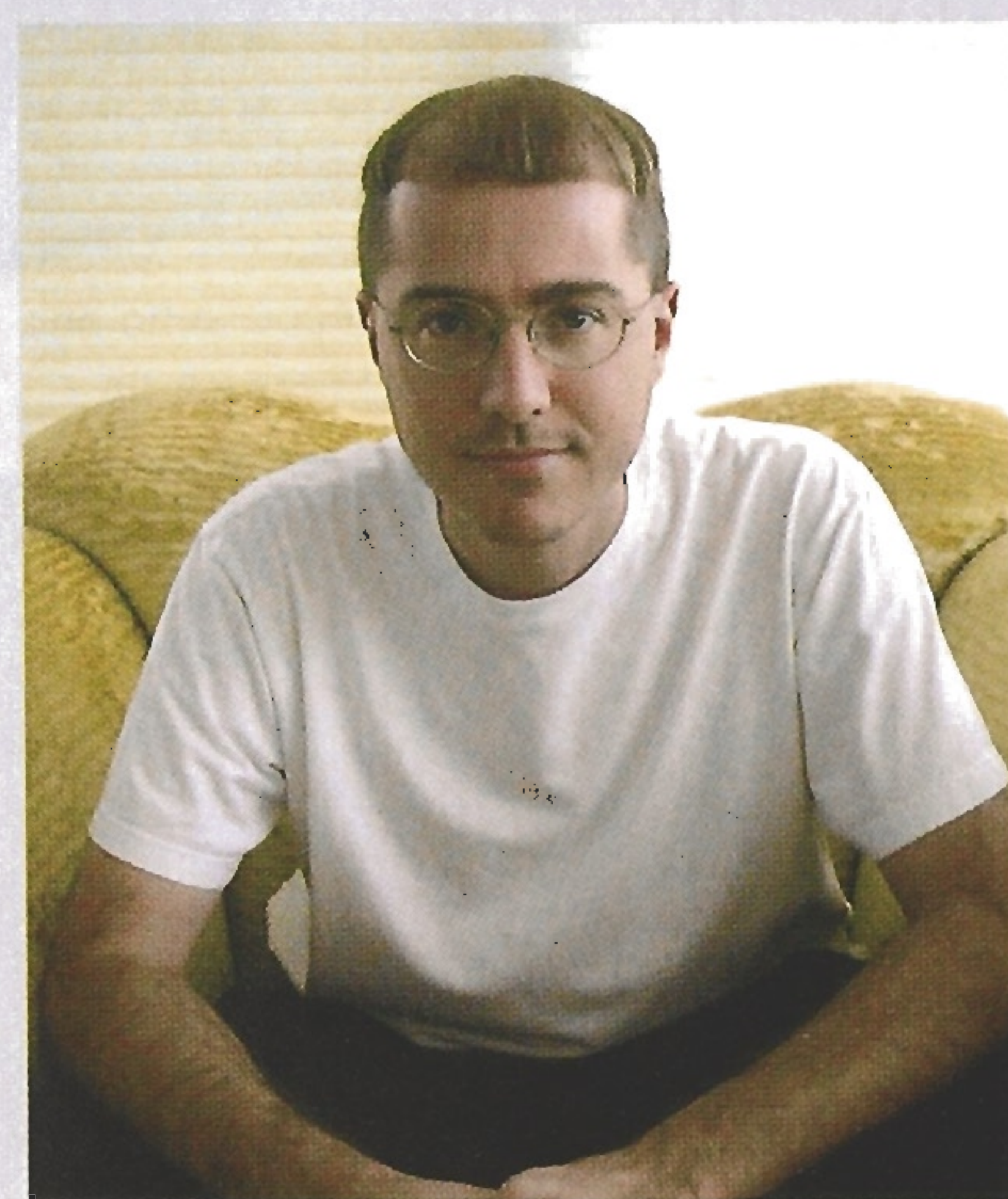
Magnatune recently celebrated their first year of business as an Internet-based 'open music record label'. Founder John Buckman has now signed some 180 artists and built up a catalogue of over 300 albums covering a variety of genres. From the outset, the label's catalogue has been released under a Creative Commons licence. Buckman chose the Attribution-NonCommercial-ShareAlike 1.0 licence (by-nc-sa 1.0).

"If you want people to listen to your music, you need to give them the legal right to do so," he says. "If you just put an MP3 file on the Internet and someone downloads it and plays it, technically that's piracy. And so, in order to be clearly legal, you need to associate a licence with a piece of music when you put it on the Internet."

Magnatune let you listen to their entire catalogue on-line for free as high- or low-bandwidth MP3 audio streams, and let you buy individual albums either for download (in a variety of lossy and lossless, DRM-free formats) or on CD. The label pay each artist half the money received from sales and commercial licensing of the music, and Buckman believes that consumers are willing to buy the music they like in order to support the artists who make it.

Because the CC licence used by Magnatune doesn't include a NoDerivs element, you're free to alter, transform, or build upon any Magnatune track(s) in order to create a new track of your own. However, the ShareAlike licence element means that anyone can do the same to your track in turn once you've made it available non-commercially.

The NonCommercial element means that if you want to use your track in any commercial way you have to separately license and pay a fee for each Magnatune track that you've used in it. To facilitate payment for commercial use of Magnatune artists' material, the label provide a licensing interface on their web site. This lets potential licensees select from a variety of applications, ranging from radio ads to movie soundtracks, compilation albums to public spaces, and then select further options within each application — after which the interface reports exactly how much the intended use will cost. "I think if you're going to use a non-commercial Creative Commons licence, it's absolutely crucial to state upfront what further use will cost," says Buckman. Tracks can be



Magnatune founder John Buckman. "In order to be clearly legal, you need to associate a licence with a piece of music when you put it on the Internet."



downloaded for free as 128kbps MP3s if Non-Commercial is selected from the list of licensing options. This can be useful for, say, indie filmmakers who want to try out tracks against their films. Buckman reveals that film is the most popular application for commercial licensing at the moment. Magnatune issues about 20-30 film licences a month.

"A lot of it is because of Creative Commons," he says. "Indie filmmakers will make their films and put our music in as a temp track, because at that point it's legal to do so; they can show the film in a non-commercial setting. Then when they get picked up for distribution, we're there with a fixed, reasonable price which they already know."

For more on Magnatune, see the article on Digital Music Distribution in *SOS* February 2004 (located at [www.soundonsound.com/sos/feb04/articles/online-music.htm](http://www.soundonsound.com/sos/feb04/articles/online-music.htm)).

**W** [www.magnatune.com](http://www.magnatune.com)

**W** <http://creativecommons.org/licenses/by-nc-sa/1.0>

ShareAlike. In the concise terms of the Commons Deed, this means: "If you alter, transform, or build upon this work, you may distribute the resulting work only under a licence identical to this one." So with an Attribution-ShareAlike licence, someone could use your work in their own and release the result commercially, but their work would then fall under the same licence. So you, or anyone else, could use their work in turn.

The CC Music Sharing licence has its own button ('Share Music' CC) and its own Commons Deed which states that "The owner of this music retains his or her copyright but allows you to: download, copy, file-share, trade, distribute, and publicly perform (eg.

web-cast) it." It also specifies Attribution, NonCommercial and NoDerivs. In other words: share it but don't sample it, alter it, or make money from it, and don't take away my credit. The Legal Code is the usual Attribution-NonCommercial-NoDerivs 2.0 licence, but if you want to make it clear that your music's shareable (and that's all) then this is the one to use.

## Licence To Sample

In a recent sampling case in the US, the court concluded that any and every sample, no matter how small or altered, needed to be licensed. The ruling included the following comment: "Get a licence or do not sample.



► We do not see this as stifling creativity in any significant way.” Of course, the reality is that tracking down the copyright holder can be so difficult that it *does* put a brake on sampling creativity. The Creative Commons sampling licences aim to rectify this situation by enabling artists to release their music under licences which specifically allow sampling.

There are three sampling licences available: Sampling, Sampling Plus, and NonCommercial Sampling Plus. All three state in their Commons Deed that: “You are free to sample, mash-up, or otherwise creatively transform this work”. The Legal Deed offers a more detailed and wordy version of this in its ‘Re-Creativity’ clause, but the included phrases “highly transformative of the original” and “substantially different from the original” give you the flavour.

Essentially, Sampling and Sampling Plus allow both non-commercial and commercial use of the work (so someone can release a track containing samples from your music and not have to pay you), while, as the name indicates, NonCommercial Sampling Plus doesn’t allow sampling for commercial use. In this case, as with the other licences having a NonCommercial element, someone who wants to sample a track of yours for a commercial release would have to contact you and come to a separate arrangement. You can make this easier by including with your work a URL link to licensing information (especially as the Legal Code says any such URL has to be included, to the extent reasonably practicable, with any derivative work or copies of the original work distributed or performed by the licensee).

The only other difference in the licences is that Sampling Plus and NonCommercial Sampling Plus allow someone to perform, display, and distribute copies of the whole track on a non-commercial basis, so it can be file-shared and used in a non-commercial web-cast, for instance — whereas the Sampling licence prohibits any such further use of the whole track.

Another feature common to all three Sampling licences is that the licensed Work can’t be used to “advertise for or promote anything but the work you create.” So your music can’t be used in an ad (again, the agency can always approach you and come to a separate arrangement, of course).

One label which has recently decided to put their releases out under the Sampling Plus licence

is Positron! Records. All the artists on Positron! own their catalogue rights, and according to label boss Chris Randall all but one have agreed to the use of the licence. Positron! will put out their first two releases to use the licence in late November and early December 2004, while existing releases will adopt it as and when they’re re-pressed. Randall has an entry in his weblog at [www.sistermachinegun.com/blog.jsp?month=10&year=2004](http://www.sistermachinegun.com/blog.jsp?month=10&year=2004) which is well worth reading, as it gives a good insight into the thinking of someone who has made the move into CC licensing.

Of the remaining Creative Commons licences, Public Domain is obviously for dedicating Works to the public domain (which actually means giving up your copyright, not licensing it), Developing Nations is for licensing only to countries not classified by the World Bank as high-income economies, Founders’ Copyright is a way to make copyrighted material available for the term specified in the US’s first copyright law, back in 1790 (14 years extendable to 28), and the CC-GNU GPL and LGPL licences ‘wrap’ the famous open-source licences in a CC Commons Deed and CC metadata.

## To License Or Not To License?

So should you make use of Creative Commons to license your music? Well, there’s no easy answer to this. The purpose of this article is to inform you of the options that Creative Commons licensing gives you, not to make a simple ‘for’ or ‘against’ recommendation. Obviously, you need to have the rights to your music before you can make a decision about any kind of licensing. And Creative Commons doesn’t magically give you rights to someone else’s All Rights Reserved content (so watch out when using samples — unless they come from a release that uses a Creative Commons Sampling licence for commercial and non-commercial

## Links To Further Reading

### COMMON CONTENT (CC-LICENSED WORKS)

**W** <http://commoncontent.org>

### CREATIVE COMMONS

**W** <http://creativecommons.org>

### CREATIVE COMMONS MUSIC SHARING LICENCE

**W** <http://creativecommons.org/license/music>

### CREATIVE COMMONS SAMPLING LICENCES

**W** <http://creativecommons.org/learn/licenses/sampling>

### POSITRON! RECORDS

**W** [www.positronrecords.com/cc](http://www.positronrecords.com/cc)

### TEXTONE

**W** [www.textone.org](http://www.textone.org)

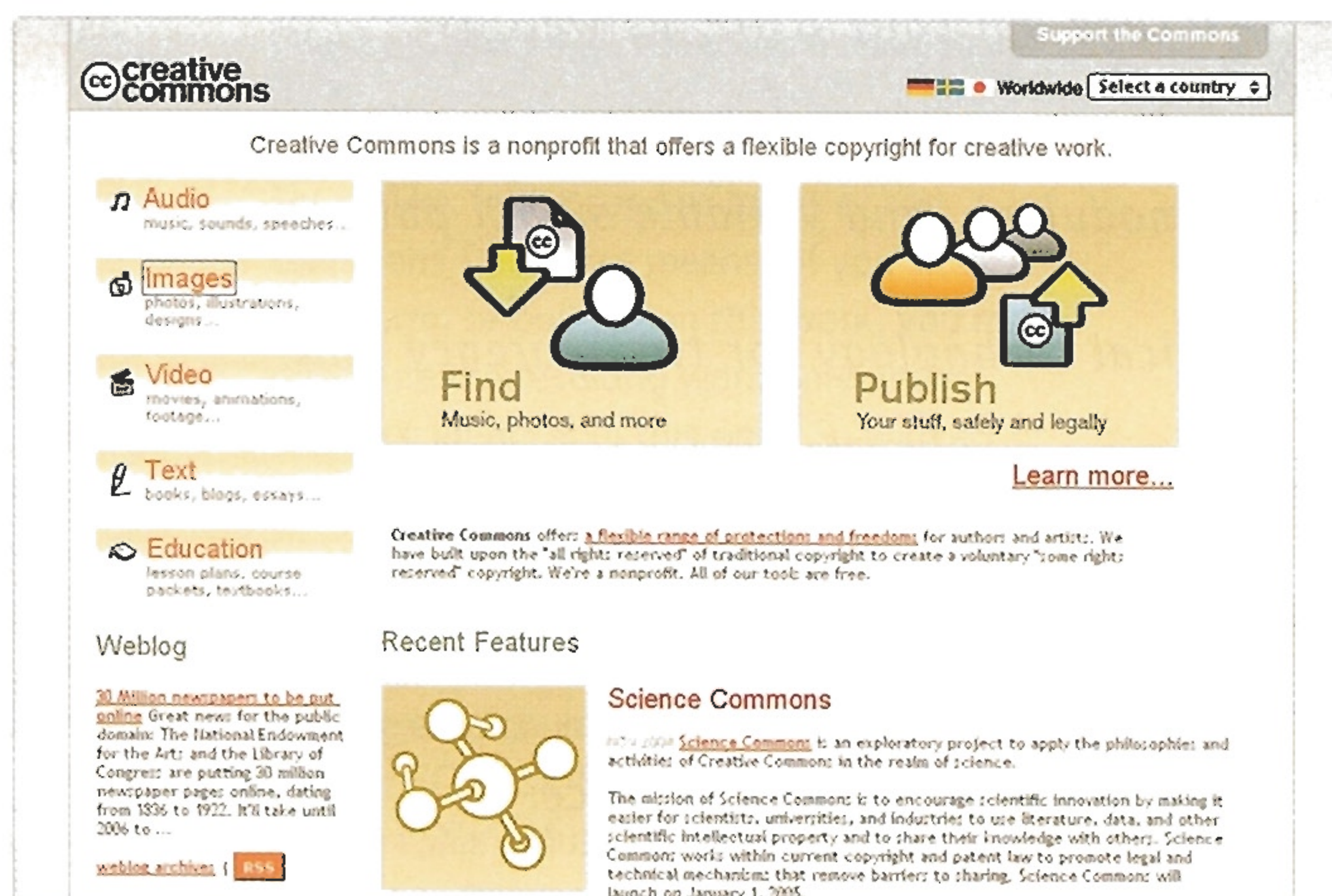
use, of course!).

If the thought of anyone sharing your music over the Internet makes you mad, you’re going to fall at the first hurdle of CC acceptance, unless that is, the Sampling 1.0 licence strikes the right balance for you. One point to bear in mind is that you may start coming across CC-licensed music, and if you’re of a sampling inclination, then you may even find tracks you’d like to sample from. All in all, it’s worth being aware of the various Creative Commons licensing do’s and don’ts even if you’re not planning on licensing your own music. If you’re making music as a hobby, with no particular view to or need for recompense, you could look on Creative Commons licensing as a great way to make your music as widely available as possible, on a legal basis for your listeners. You can always provide an on-line option for people to buy or make a donation, and depending on the licence you choose, you may get commercial users knocking on your door.

If you want to make a living out of your (copyright-owned) music, it’s more complicated. There’s no hard and fast business case for going the Creative Commons route. If you’re looking to build

a fan base, it could be something to try. You could always dip a toe in the water by licensing one or two tracks. Read the Magnatune box on the previous page and look over their web site. CC-licensed music doesn’t have to mean no-pay music; also, look at the way the NonCommercial CC element feeds into a commercial licensing revenue stream on the site.

The music world is changing, and Creative Commons licensing could provide independent musicians with a golden opportunity to ride that change. **EOS**



The Creative Commons web site. Here you can read up on the background to the creative commons movement, learn all about the various Creative Commons licences and which is best suited to you, and of course download the licences themselves when you’ve decided.