

# Creative Commons: a Convergence Model Between the Ideal of Commons and the Possibilities of Creation in Contemporary Times, Opposed to Copyright Impediments

Elizabeth Roxana MASS ARAYA<sup>a,1</sup> Silvana Aparecida BORSETTI GREGORIO  
VIDOTTI<sup>a</sup>

<sup>a</sup> *Universidade Estadual Paulista Júlio de Mesquita Filho*

**Abstract.** The contemporary individual finds on the Internet and especially on the Web facilitating conditions to build a basic infrastructure based on the concept of commons. He also finds favorable conditions which allow him to collaborate and share resources for the creation, use, reuse, access and dissemination of information. However, he also faces obstacles such as Copyright (Law 9610/98 in Brazil). An alternative is Creative Commons which not only allows the elaboration, use and dissemination of information under legal conditions but also function as a facilitator for the development of informational commons. This paper deals with this scenario.

**Keywords.** copyright, commons, creative commons, information and technology, Web 2.0, information science

## Introduction

Information and Communication Technologies (ICT), the result from the fusion of analog telecommunications and computing in the 1970s, allow information contents in text, image and sound formats to be conveyed by a single support (the computer). They also enhance the progressive passing of information in a hierarchy in which communication is from one to all (mass media) to individualized forms of production, diffusion and storage of information based on rhizomatic multiplicity, that is, communication from all to all: Internet allows hypertextual communication between groups and individuals and it decentralizes dissemination of information whereas the Web encourages interactivity and collaborative action [1].

Information and Communication Technologies are present in the daily life of a significant portion of global society and they promote important changes in the way information is developed and accessed in terms of time and space: "*Information spaces store*

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<sup>1</sup> Corresponding Author: Elizabeth Roxana Mass Araya, Av. Hygino Muzzi Filho, 737, Campus Universitário Marília-SP, Brazil. E-mail: elizabethmass@ymail.com.

*information items, memories, means of transfer, and the interaction reality of information recipients all in the same communication environment* [2].

Therefore, individuals are now experiencing an ever growing social context in which ICT, especially the Internet and the Web on the Internet, allows them to produce information and not only be information consumers. Interaction and collaboration practices favored by ICT fill information spaces in which these individuals' creativity modifies the flow of information, expanding it and giving it voices not too long absent. Article 19 of the Universal Declaration of Human Rights has currently a greater chance of becoming reality: *"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"* [3].

However, despite finding on the Internet and especially on the Web facilitating conditions to build an infrastructure based on the concept of commons as well as favorable conditions to collaborate and share resources for the creation, use, reuse, access and dissemination of information, individuals also find obstacles. The copyright (Law 9610/98 in Brazil), is one of them.

This paper focus on Creative Commons licenses as an alternative system to copyright that ensure creation and dissemination of information within legal patterns and promote informational commons

## **1. Commons in the Web 2.0**

Web 2.0 is an information space characterized by the use of collective intelligence [4] as a booster of network connections growth: users add value to the network. In the Web 2.0 complex context, collaboration is understood as a practice people interested in achieving some common goal use. Each individual's motivation is what enhances collaborative action, as it works well for complex situations:

*"Complexity is unpredictable. So is collaboration, but it is also adaptable. Complexity is disordered and diverse. Collaboration calls for the diversity and the creativity of people who improvise and innovate."* [5].

The individual's creativity is also favored in this Web. Remix, which Lemos [06] defines as set of social and communicational practices that combine collage and information content cut-ups from digital technology are more present in informational processes. But such practices are not new, as each individual naturally creates from previous creations. The new, therefore, would be precisely in the technology and in the ease with which the product of this technology can be shared.

Cyberspace is an information environment in which individuals are free to play a much more active role than it was possible in the industrial information economy of the 20th century.

*"This new freedom has a great practical promise: as a dimension of individual freedom, as a platform for better democratic participation as a means to promote a culture more critical and self-reflective and, in a global economy increasingly dependent on information, as a mechanism to achieve improvements in human development everywhere."* [7].

In this information environment, creativity, collaboration and sharing are strongly associated with a phenomenon that has become stronger in the digital culture scenario:

*“A series of changes in the technologies, economic organization, and social practices of production in this environment has created new opportunities for how we make and exchange information, knowledge, and culture. These changes have increased the role of nonmarket and nonproprietary production, both by individuals alone and by cooperative efforts in a wide range of loosely or tightly woven collaborations.” [7].*

This phenomenon is called commons, a word whose meaning can be what is common or spaces and things that are public. In some cases it can have the meaning of community or of a shared production between pairs [8]. In the present context, commons refer to:

*“A particular type of institutional arrangement that governs the use and the disposition of resources. Their main characteristic, which defines them differently from property, is that no individual has the exclusive control of use and disposition of any resource in particular. On the contrary, resources governed by the community may be used and disposed by anyone among a given number of people (more or less well defined) according to rules which can vary from “everything is valid” to clear rules formally articulated and effectively imposed”. [9]*

Digital commons and their undeniable power are present, according to Bollier [10], for example, in the success of Linux and other open code software or in Wikipedia and Flickr growth. Internet itself, Lessig writes, is a common:

*“The space that anyone can enter, and take what she finds without the permission of a librarian, or a promise to pay. The net is built on a commons — the code of the world wide web, html, is a Computer language that lays itself open for anyone to see — to see, and to steal, and to use as one wants. If you like a web page, then all major browsers permit you to reveal its source, download it, and change it as you wish. It’s out there for the taking; and what you take leaves as much for me as there was before”. [11].*

It is through the internet that projects such as Move Commons (MC), created in 2011, run. MC was meant to be a tool for initiatives, collectives, non-governmental organizations and social movements to state the basic principles they use in their projects, as well as to make their identification on the web easier. Therefore, MC will be able to help others to understand and find other people’s work and approach in an easier manner, to find other collectives with common interests, and to attract volunteers to these collectives.

On the MC website (<http://movecommons.org/preview/ject>), the individual writes the name of his initiative, the web address, the key words related to his project and chooses four labels among the following ones to identify it:

**Non-Profit**- Your initiative does not seek economic benefit or **For-Profit**-Your initiative seeks economic benefit; **Exclusive**-Your initiative prefers to protect their work and not disclose it to others or **Reproducible**-Your initiative is visible, open and transparent, which allows it to be adapted by others; **Reinforcing the Commons**-Your initiative protects/expands the Commons, resources that are collectively owned or **Reinforcing Other Aims**-Your initiative focuses on other areas different than The Commons and **Representative**-Your initiative is driven by representatives or **Grassroots**-Your initiative is driven by horizontal collective decisions. The Move Commons logo with characteristics of the project is both human and machine readable.

MC arises from the initiative of Comunes (<http://comunes.org/>), a non-profit collective dedicated to making the work of other collectives and activists easier by developing web tools and free resources. Projects such as Ourproject.org and Kune are some Comunes projects.

Ourproject (<http://ourproject.org/>) active since 2002, now hosts 1,000 projects and its services receive around 1,000,000 monthly visits. It acts as a central location that offers a web space and tools for projects that focus on free knowledge of any topic. It provides multiple web services (hosting, mailing lists, wiki, ftp, forums, etc.) to

social/cultural/artistic projects as long as they share their contents with Creative Commons licenses or other free licenses.

Kune (<http://comunes.org/>) is a platform that encourages collaboration, content sharing and free culture. It aims to improve, modernize and replicate the work ourproject.org does, but in an easier manner and expanding its features for community-building. It allows the creation of online spaces of collaborative work, where organizations and individuals can build projects online, coordinate common agendas, set up virtual meetings and join people and/or organizations with similar interests.

Humankind experiences a unique moment in history. With the development of ICT a paradigm, in which new habits are being incorporated, arises. Collaboration and sharing are common practices in the digital culture which modify the way information is elaborated and disseminated.

In this context, views and theories indicate the transformation of a society of passive consumers who used what few others produced into a society in which everyone can participate actively in its social, political and cultural construction. The ideal of Commons is seen as a practice that makes this transformation possible. Copyright, however, has to be reconsidered as technological development confronts laws that protect intellectual work and create new conflicts and contradictions such as piracy, a common practice among the great majority of producers and intellectual content consumers.

## **2. Brazilian Legislation: Law 9610/98**

In Brazil every creator of a literary intellectual, artistic or scientific work is protected. This protection constitutes a moral right (creation) and a property right (pecuniary). It is regulated by Law No. 9610 of 02/19/98 ([http://www.planalto.gov.br/ccivil\\_03/leis/L9610.htm](http://www.planalto.gov.br/ccivil_03/leis/L9610.htm)) and it focuses on the author, unlike copyright law which focuses on the work and on the prerogative of being able to be copied.

The work protected by Brazilian law is the one which represents an intellectual manifestation expressed through any medium or fixed in any tangible or intangible support, whether known or to be invented in the future. Originality is the basic requirement for a work to be protected legally.

Brazilian law protects any work regardless if it is registered or not, for the time the author lives, and for 70 years following his/her death. After that, the work will be of public domain and may be used without authorization, provided they do not hurt the author's moral rights.

Law 9610/98 as well as main intellectual property right institutions, Lemos writes, [6] were created in the nineteenth century based on a completely distinct social reality and have not been changed ever since.

Nowadays, therefore, copyright acts as a big "no". One must obtain prior authorization to use any work due to "all rights reserved", and as Lemos [12] warns, the consequence is that transaction costs to obtain a previous authorization will restrict immensely the amount of culture that society can access at any given time.

Brazil has been interested in creating discussion environments to find solutions and suggest changes for copyright laws. From 2007 until November 2009, in the so called National Forum of Authors' rights, almost all categories in question (authors, artists, publishers, record companies, users, consumers, among others) were able to criticize and suggest a review for the current law. In June 2010, the Ministry of Culture made

Public Consultation available. On the Ministry of Culture website citizens could make suggestions and review the current authors' rights law with the suggested changes.

*"The online consultation was divided into two periods, each of them spanning roughly 45 days. The first period of the consultation involved a debate about general principles, which then served as reference for the writing of the text of draft Bill. These principles were divided into three groups: (1) individual and collective rights (privacy, freedom of speech, and access rights), (2) principles related to intermediaries (net neutrality and civil liability), and (3) governmental directives (openness, infrastructure, and capacity building). The draft text for the Bill, reflecting the comments received on its first phase, was then put under consultation for the second period". [13].*

This project, an initiative of the Brazilian Minister of Justice in partnership with the Center for Technology and Society, Getulio Vargas Foundation (CTS / FGV), called the "Civil [Regulatory] framework," as opposed to the "Criminal framework" is currently being discussed in Congress as the Bill of Law no. 2126/2011 (<http://www.a2kbrasil.org.br/wordpress/wp-content/uploads/2011/09/Marco-Civil-Ingle%CC%82s-pm.pdf>).

*"The Civil Regulatory Framework contains 25 articles divided into 5 chapters, concerning: (1) Preliminary Provisions; (2) User Rights and Guarantees; (3) Provision of Connection Services and Internet Services; (4) The Role of Public Authorities; (5) Final Provisions. The bill begins by advancing users' rights and some general principles for the regulation of the Internet, before dealing with the issues of the preservation of connection logs, secondary liability for ISPs, and net neutrality, and then wraps with directives aimed at the public sector". [13].*

However, although society is concerned with reviewing authors' rights, Brazilian scenario is not very different from the rest of the world. Individuals once predominantly information consumers are or may become producers, but they must find alternatives to develop their information processes according to what is foreseen in the law. Therefore, society segments concerned with possible restrictions seek alternatives to ensure common citizens their basic right to information as they believe it is essential for the development of a global culture with fewer inequalities.

### **3. An alternative: Creative Commons**

Creative Commons licenses are an alternative that can contribute to the flowing of information processes, even though the legislation in effect does not benefit them. Creative Commons (<http://creativecommons.org>) is a non-profit project with voluntary membership which was designed by North American Lawrence Lessig and is headquartered at Stanford University in the United States. It is already present in seventy-two countries.

Since 2002, Creative Commons has offered individual creators, large companies and institutions, a set of audio, image, video, text, and education licenses. These licenses offer intellectual content authors such as musicians, filmmakers, writers, photographers, bloggers, journalists, scientists, educators and others a simple and standardized alternative to grant permission to copy rights and get credit for their creative work. It allows, therefore, others to copy, distribute and make specific uses of works. In other words, it allows these works to have "Some rights reserved" - according to the uses the author wishes to grant these creations – as opposed to the traditional "all rights reserved" of Copyright.

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Creative Commons licenses have three different links: a summary of the license in plain language (Commons deed) containing relevant items for the user's understanding; the detailed license (Legal Code) with legal terms that guarantee the validity before the court, and the digital code of the license with a language that helps computers and search engines as well as other applications to identify the work and its terms of use.

Creative Commons licenses are already present in a great number of society segments. The number of works licensed under Creative Commons was less than 1 million at the end of its first year. By the end of 2010, it had reached over 400 million only in Yahoo! SiteExplorer and Flickr. After the first year, only about 20% of the licensed works allowed commercial use and remix, that is, "free" or "open" use. After eight years, this number has almost doubled [14].

It is worth mentioning that Creative Commons licenses have become important tools for Open Access Movement to scientific literature. They are considered ideal to protect authors' rights and at the same time grant access and use of scientific production, as the author may hold the right to prohibit distribution of modified, non-authorized copies as well as copies intended for commercial use. *"Basically, it legally prevents plagiarism, disfiguration and commercial use of the work. It also allows all kinds of uses requested by lawful academic use, including research and consultation easiness".* (15).

In 2003, Brazil joined Creative Commons licenses coordinated by Ronaldo Lemos, a lawyer and law professor at Getulio Vargas Foundation in Rio de Janeiro. Brazil was the third country after Japan and Finland to join the project. Lemos argues that Creative Commons licenses foster creative freedom, access, dialogue and cultural transformation, and thus enhances one of Brazilian's characteristic: to transform cultural elements of their own and other cultures creatively [12].

In May 2010, CCMonitor (<http://monitor.creativecommons.org/Brazil>) had 1,796.052 works registered under Creative Commons licenses from different society segments in Brazil.

In August 2006, the movie *Cafuné* directed by Bruno Vianna was released simultaneously in theaters around the country and on the Internet under a Creative Commons license which allowed anyone to make their own cut of the film, create different interferences in the story and release it subsequently, as long as they used the same Creative Commons license.

Bruno Viana's initiative opened new possibilities to help overcome the limited number of distribution channels. Despite the growing number of movies produced in Brazil, only approximately 50 of them are released in Brazilian movie theaters every year, creating a significant distribution funnel. With Viana's idea, movies are not restricted to a few movie theaters that can show them only for a short period. Internet can increase the number of viewers and favor a public that rarely has access to different types of knowledge.

The first film festival under Creative Commons, CC MAD, Madrid Creative Commons Film Festival (<http://ccmad.cc/>) organized by BccN, Barcelona Creative Commons Film Festival, was held in Spain in January 2012. It addressed new forms of filmmaking in the digital culture under Creative Commons licenses as they connect the author directly to viewers, boost shared creation and production and allow a larger number of viewers to see the work.

These initiatives have the same interests for musicians worldwide, but especially in developing countries. In fact, music was the first field to benefit greatly from alternative licenses.

The Brazilian band *Projeto Axial* that explores different sounds from electronic elements and makes its music available under a Creative Commons license has created a new free music media format called *Bagagem* (<http://www.axialvirtual.com/Axial/Axial/Bagagem.html>). *Bagagem*, also available under a Creative Commons license, retrieves and updates the concept of visual artwork lost in the digital network. It produces, packages, and returns the visual interface of physical means lost in this virtuality. It brings musicians, artists, and the social network itself together, disseminates works and personal projects of users and spreads music freely.

Creative Commons licenses are also used by several Brazilian government agencies such the National Center for Folklore and Popular Culture (<http://www.cnfcp.gov.br/>) that develops programs and projects for studies, research, documentation, diffusion and promotion of Brazilian culture; the Research Program in Biodiversity (<http://ppbio.inpa.gov.br/>); the Department of Airspace Control (<http://www.decea.gov.br/>), and the Digital Library of the Superior Court of Justice (<http://bdjur.stj.gov.br/xmlui/handle/2011/17968>) among others.

Among the several other highly relevant initiatives benefiting a society that calls for changes in the way public affairs are considered is SERPRO (<https://www.serpro.gov.br/>), a public enterprise under the Ministry of Finance which provides Information Technology and Communications services for the public sector in order to facilitate the access to educational resources. It offers 14 complete courses developed by Serpro's Corporate University under a Creative Commons license.

The courses offered are Time Management, Water for All, BrOffice 3.1, Express Mail, Understandings Computing, Fundamentals of Java PHP5, Introduction to Project Management, Introduction to Java Programming Language, Introduction to Object

Oriented Programming, First Job, Awareness to use Free Software, Ubuntu, Using UML, and Mozilla Firefox. These courses, available for distance education, range from environmental issues to info digital inclusion, and provide the necessary knowledge to ensure the inclusion of citizens in their community.

Another initiative has been the publication of every teaching material produced by the Education Department of São Paulo state under a Creative Commons license since June 2011. In September of the same year, this led to the Decree No. 52681<sup>2</sup> enacted by São Paulo City Hall which determines that all educational material produced by the Education Department of São Paulo state is released on the Internet for free download. This allows school systems of other cities and states, as well as teachers, NGOs and others to use the content produced by the Municipal School Network of São Paulo.

São Paulo City Hall's proposal goes beyond a merely political interest and promotes knowledge socialization which is built primarily with resources society itself has and provides.

Creative Commons project is an alternative for the imbalance between what Information and Communication Technologies provides and what traditional laws (still related to the press culture) establish for the production of informational content.

Commons are environments in which non-proprietary production does not belong to the market system. They result from individual and collaborative participation of different individuals in different parts of the world. They carry the promise of a free and democratic dimension as a concept of promoting a conscious and critical culture that can be practiced in a global economy based on information and knowledge.

#### **4. Considerations**

We are experiencing the third generation of Information Science – an era of interactive knowledge marked not only by the possibility of transforming every information input provided by ICT into a digital database, but also by significant changes in the way we produce and disseminate information.

Individuals in the digital cultural scenario not only consume information but also produce it. Therefore, they have their concepts as to authorship and creation reformulated in their information processes.

In modern times, originality and authorship concepts referred to a privileged individual able to create works from a spontaneous inspiration. In contemporary times, these concepts are more related to a shared, collaborative and interactive creation.

Views / theories show a society once predominantly of passive consumers changing into a society of active consumers who participate in their social, political and cultural construction. In this context, the ideal of Commons is seen as an agent of this transformation.

However, new habits require renewed looks. One of them should deal with established Copyright models.

Creative Commons project is one of the alternatives that promote information flow in the contemporary context as opposed to those that generate excessive censorship and

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<[http://www3.prefeitura.sp.gov.br/cadlem/secretarias/negocios\\_juridicos/cadlem/integra.asp?alt=27092011D%20526810000](http://www3.prefeitura.sp.gov.br/cadlem/secretarias/negocios_juridicos/cadlem/integra.asp?alt=27092011D%20526810000)>

control such as the Sinde law in Spain (which determines the closure of file-sharing sites), the French Hadopi law (which seeks to punish people who download copyrighted content) or the Stop Online Piracy Act (an act the United States intends to approve to legalize the closure of any site containing material that violates copyright or intellectual property rights). Creative Commons project offers technical and legal infrastructure for the collaboration and effective sharing of information contents. These practices enrich digital commons – environments which grow and convey the ideal that information may be an effective universal human right.

Creative Commons licenses do not meet all needs digital culture requires, but they certainly minimize the current paradoxical situation – even in scientific production – and promote information flow, access to knowledge and the development of a fairer global culture.

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