

Texas Education Agency
Office of Legal Services
1701 North Congress Avenue
Austin, Texas 78701-1494
June 1, 2018

RE: Response to the Agency's request for Comments on its Proposed Open Education Resource Instructional Materials License.

We thank the Agency for the opportunity to comment on this license and for its commitment for making high quality educational materials available to teachers and students. Creative Commons (CC) is a nonprofit organization that provides standard, free, open licenses and other legal tools to make it easier to share and build upon the creativity of others, consistent with the rules of copyright. Creative Commons USA is a project at American University Washington College of Law that works to support the use, adoption and understanding of open licenses and open licensing policies to increase access to knowledge.

Together, we have supported many different institutions, including states, national governments and intergovernmental agencies in their implementation of open licensing policies. Drawing on that experience, we recommend that when Texas implements its open licensing policy, it should use the Creative Commons Attribution 4.0 License (CC BY)¹ instead of using a new license written by the Agency for this purpose.

The Creative Commons Attribution License offers clear benefits over the use of a TEA-specific open license

When TEA implements its open licensing policy we recommend that it use the Creative Commons Attribution 4.0 License (CC BY) instead of authoring a new license. This allows the agency to build on three key benefits of the CC BY license: predictability based on the extensive experience of use of the CC licenses; a reduction in the cost and effort of developing training and professional development materials; and increased compatibility of TEA-created materials with existing² and future Open Educational Resources (OER).

I. The Creative Commons Attribution License offers greater predictability built on legal expertise, large scale institutional implementation, and existing legal interpretation

When faced with the choice of using an existing license or drafting a new one, TEA should consider the value of the predictability offered by the CC BY license. Creative Commons licenses were drafted by experts in copyright licensing in 2002 and have been updated by a team of legal experts

¹ CC BY License Deed: <https://creativecommons.org/licenses/by/4.0> CC BY License: <https://creativecommons.org/licenses/by/4.0/legalcode>

² There are over 1.4 billion existing CC licensed works on the web. <https://stateof.creativecommons.org>

to the current version 4.0 license to reflect 17 years of real-world licensee and licensor experience. The original drafting and these updates reflects notable cumulative legal expertise in copyright licensing and real world testing that are unnecessary for TEA to duplicate.

Over that time, Creative Commons licenses have been used by many large-scale institutional users including US K-12 state OER initiatives in 20 states, district-level initiatives in over 100 districts,³ state higher education initiatives, and higher education adoptions at over 2,000 U.S. institutions. Administrators and general counsel at these institutions have examined the licenses, and their feedback and experience has informed the latest license versions.

Early innovators in the online and open education world have also used Creative Commons Licenses, and have tested the function of the license in a large range of legal operating environments. Creative Commons Licenses are used by OpenStax, the Open Textbook Network, MIT OpenCourseWare, Open Yale, and the Khan Academy to deliver innovative educational content at scale.

Funding agencies, such as the US Department of Education, the US Department of Labor, USAID, the US Department of State, the Gates Foundation, the Ford Foundation, and the Hewlett Foundations use Creative Commons Licenses to implement open licensing requirements in their grants. State level funders, such as California and Washington State Community College systems require CC BY licenses on all educational resources created with system funding. Internationally, intergovernmental organizations and multiple national governments around the world all use Creative Commons licenses to implement their open licensing policies.

For the past 17 years these institutions and users have provided real-world testing for how to implement an open policy with a Creative Commons license. By using a CC BY License on TEA materials, TEA gains predictability and the ability to draw on this experience, rather than deal with unexpected issues from a new license.

Creative Commons licenses have seldom given rise to litigation. However, they have been litigated and in all known cases they have been enforced and interpreted as designed by courts in the United States and around the world.⁴ Again, by drafting a new license, TEA forgoes the benefit of this predictability and legal precedent.

II. Creative Commons Licenses are addressed in existing teacher professional development trainings and materials

Clear public materials, examples, and FAQs⁵ on implementation and interpretation exist for Creative Commons licenses for both licensors and licensees.

³ <https://tech.ed.gov/open>

⁴ CC Case Law: https://wiki.creativecommons.org/wiki/Case_Law

⁵ <https://creativecommons.org/faq>

Existing teacher professional development materials and opportunities for teachers and instructional designers exist for the Creative Commons Licenses that would otherwise need to be created and offered by TEA. In contrast, if TEA uses a CC license, it can build on:

- Trainings on OER and Creative Commons licenses at teacher professional development events that have already familiarized many teachers with the basic principles of how Creative Commons licenses work to facilitate the creation and use of OER. Examples include:
 - Conferences such as ISTE and INACOL
 - Meetings where OER is highlighted, such as the Future Ready and #GoOpen Summits
 - Trainings by other funders who use CC licenses to implement their open licensing policies
 - Experiences with partner organizations such as the Council of Chief State School Officers (CCSSO) who use CC BY licenses on their own institutional materials.⁶
- Institutional materials created by other Creative Commons users, including, for example:
 - Rebus Guide to Making Open Textbooks⁷
 - Washington State's OSPI OER Implementation Playbook⁸
- Explanatory materials and training provided by Creative Commons
 - Creative Commons Certificate Training Materials⁹
 - CC USA fact sheets¹⁰

III. Increased Interoperability with Existing Openly Licensed Content

The final benefit that TEA would see from using Creative Commons licenses is clear compatibility with the 1.4 billion existing works shared under Creative Commons licenses. One main benefit of OER is the ability to reuse and adapt in other schools, in other states or countries, in other languages.

As discussed in Section I, Creative Commons licenses are used by other states, institutions, agencies, and governments not only to give the public permission to use those materials, but also so that materials created by a wide range of producers and funders are interoperable under a standard set of conditions that are easy for users to expect. Many funding agencies and foundations require the use of CC license to ensure that their grantees' works will be interoperable with existing and future OER, and to reduce the waste of duplication of effort.

Given the value of the materials potentially created by TEA under this program, it would be a missed opportunity for those materials to not be fully and clearly compatible with existing OER licensed under a CC license.

⁶ <https://www.ccsso.org/index.php/creative-commons>

⁷ <https://press.rebus.community/makingopentextbookswithstudents/>

⁸ <http://www.k12.wa.us/OER/101.aspx>

⁹ <https://certificates.creativecommons.org>

¹⁰ <https://creativecommonsusa.org/index.php/fact-sheets>

Additionally, the use of a CC license aligns TEA with the practice in the rest of the open educational field, allowing for easy tagging of materials in the standard CC license categories in repositories, and allowing Texas teachers to understand the CC license conditions on materials created by other institutions.

Conclusion

For these reasons, we respectfully recommend that TEA use the Creative Commons Attribution License rather than drafting a new license.

Sincerely,

Meredith Jacob
Public Lead
Creative Commons USA
American University Washington College of Law

On behalf of:
Creative Commons
Creative Commons USA, American University Washington College of Law