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Legal aspects of the licensee's obligations according to the Creative Commons licenses and their relationship to copyright(*)

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Abstract:

The topic of the Creative Commons licenses is very important nowadays because this license is new and different from the traditional licenses. The aim of this research article is to address the legal aspects of a licensee's obligations according to the Creative Commons licenses and their relationship to copyright. The Creative Commons licenses raise several questions that this study will focus on answering, namely: the concept of the Creative Commons licenses, the characteristics of the Creative Commons licenses, the licensee's obligations under the Creative Commons licenses, and the relationship between the Creative Commons licenses and copyrights. The importance of this research article comes from the fact that Creative Commons licenses are a new mechanism and an unconventional type of license over copyright. The problem of this study lies in the author's fear of infringement of his exclusive rights after granting the Creative Commons licenses to others. Finally, in this study, an analytical and descriptive research methodology was used to clarify the ambiguities in the legal aspects of the licensee's obligations under the Creative Commons licenses and their relationship to copyright. In the conclusion of this study many important results and recommendations are communicated.

Key words: Intellectual property rights, Copyright, Creative Commons (CC), Author, Licensee, licenses, Legal obligations.

**Introduction:**

In principle, the idea of the author's moral rights is based on the necessity of respecting the author's personality as a creator and innovator, as well as protecting the work as one of the author's intellectual productions. In other words, these rights aim to achieve two basic things: respecting the author's personality and the second is preserving the identity of society and the nation.

On the other hand, the tremendous technological developments have paved the way for innovative authors to publish their books from anywhere around the world. (Hope and Ryan, 2014, p: 163) These developments made it possible for all users to access and benefit from the literature. In this regard, intellectual property laws seek to establish means to protect the exclusive rights over these innovative works. (Minjeong, 2007, p: 188).

In addition, when the author wishes to involve others in exercising some of his rights on his innovative work, and keeping the rest of the other rights on an exclusive basis, such as the author authorizing the licensee to participate in the use, modification or redistribution of his work, here the author may rightfully fear that all his rights will be wasted especially in light of the noticeable cyber-attacks that the digital world is witnessing. (Scharf, 2017, p: 378; Lessig, 2015, p: 108).

The Internet has given innovators the opportunity to publish their innovations from anywhere in the world, making it is easy for all users to access and benefit from it. At the same time saved Intellectual property laws and means of protecting the exclusive rights over such innovations. (Corbett, 2011, p: 504; Keltly, 2011, p;71). However, if any innovator wants to involve others in exercising some of his rights on his innovative work, and the rest of the rights are reserved exclusively, as if he is authorized to participate in using, modifying or redistribution, the author has the right at that time to have a justified fear from losing all rights of the work, in light of the great assault the digital world is witnessing on intellectual property rights.

Therefore, a legal avenue through which any innovator can put forward the author's rights to innovate for the benefit of others or the public freely without losing his rights; in this case, how can the author be protected from the risk of severing his work by means of attributing it to others illegally, and how can the author maintain the content the author chooses to share without modifications, as some may produce derivatives of the published works.

And some may use the work for commercial purposes without the author's consent, Based on the foregoing, Creative Commons licenses (CC) came as one of the most important new non-traditional methods that allow



the licensed author to license the licensee some rights on the work while the licensee retains the other exclusive rights. In this research article, the concept of CC licenses and their characteristics will be discussed; then the licensee's obligations under CC licenses will be debated.

1. The concept of Creative Commons licenses and their characteristics

Creative Commons licenses are a modern convention. The idea of these licenses is based on the licensor licensing to the licensee some rights over the work, while the licensor retains the other exclusive rights. In other words, the CC licenses through which creative content is shared in a freeway in order to give everyone the opportunity to access this content and rely on this content to create a new work.

Based on the foregoing, the concept of CC licenses will be discussed (1/1); then the most important characteristics of CC licenses will be elaborated (2/1).

1/1 Definition of Creative Commons licenses:

Creative Commons licenses are highly significant both locally and internationally nowadays. These licenses encourage the provision of knowledge in a legal way, and there are many licensed works on the Internet under the CC umbrella. In this context, the idea of CC licenses came as a result of technological developments and means. It must be noted here the effective role of the Internet, which paved the way to sharing the innovative works of authors on a very large scale. The Internet has also helped people to benefit from the innovative innovations published by their authors.

Based on the aforementioned, it seems that the relationship between CC licenses and copyrights (Bitton, 2011, p: 67) has a conflict with the author's exclusive rights over his work, because these rights allow the author to prevent others from abusing the work, whether by sharing, modifying, or benefiting from it except after obtaining the author's consent. But in fact, the CC licenses came only in order to avoid possible conflicts between the shared content/innovations and the author's rights.

In other words, CC licenses allow the author to share his work with the public on easy and flexible terms compared to traditional methods. (Steuer, 2010, p: 2) The work will be shared again without violating the author's exclusive right. The main objective of CC licenses is giving the public the freedom to use the author's creative works via the Internet without hindrance while preserving the author's exclusive right. Moreover, the CC licenses allow creative content to be shared freely via the Internet, in a way that enables the public to access this content so that it is considered a basis upon



which other new works are built and in accordance with the author's copyrights.

In addition, the CC licenses does not target copyright infringement as an intellectual property right; on the contrary, these licenses seek to preserve them by giving any author the opportunity to share his work with others legally. (Steuer, 2010, p: 2) The mechanism and role of CC licenses is through the removal of legal barriers to the author's innovation. Technological development and the law are combined through these licenses in a way that guarantees the author's sharing his content with the public, partially or completely, and in accordance with the author's exclusive rights.

In regard to defining what is meant by CC licenses, the CC Corporation emphasized that they are (licenses that provide everyone, from individual creators to large institutions, with a unified way to grant the public permission to use their creative work in accordance with copyright law). The CC added that these licenses "allow changing the copyright terms from the All Rights reserved model to Some Rights Reserved, and they are not a substitute for copyright." (Sornum, 2010, p: 2; Efroni, 2010, p: 429) It must be noted here that copyright allows the specific work to be reused without the author's permission, while CC licenses give broader permissions to people so that the work is reused according to the best terms for the author's needs while also preserving some exclusive rights. (Haunss,2013, p:206; Hamilton, 2017, p:54).

Hence, the CC has equalized the author as a natural person and as a legal person in terms of the possibility of benefiting from presenting his innovative work to the public. Some rights are reserved.

On the other hand, some scholars of jurisprudence have tried to highlight what is meant by CC licenses. In this context, CC licenses are defined as (a group of copyright-based licenses that specify conditions for the distribution and re-use of creative works). (Hagedorn, Gregor, et al, 2011, P: 128; Leeuw, 2012, P: 4) It can say here that this definition is brief and tries to emphasize the compatibility between CC licenses and copyright and the absence of conflict between them. CC licenses have also been defined as (the legal and social framework developed by the CC Foundation to supplement copyright by allowing the sharing and reuse of published content with conditions). (Collins,Milloy and Stone, 2013, p:8; Rosnay, 2009,p:22) From this definition, it concludes that CC licenses are within the legal framework of copyright, and may not be used except with specific legal controls. This definition is consistent with what CC has gone through in its definition of CC licenses.



In the same way, CC licenses were also defined as (a set of copyright licenses created by the CC Foundation, which relies on traditional copyright rules to strike a balance between the default publishing method that imposes that all rights are reserved and the public domain where there are no rights reserved by providing a form unified and simple allowing creators to maintain their copyright while allowing certain uses of their works under certain terms chosen by them including copying, mixing and redistribution subject to attribution).(Herr, 2020, p:1; Murray, 2013, 294; Okoro, 2013, p:2; Mireille, 2008, p:28)

It can comment on this definition that it was lengthy and tried to include within it many of the main points on which CC licenses are based. This definition, as previously mentioned, is consistent with what was stated in the definition of CC.

From our point of view, it can define CC licenses as legal means that allow each creator, on a large scale, on a continuous and flexible basis, to involve others, according to certain models, in exercising some rights on his work, while the creator retains the rest of the other rights on an exclusive basis.

2/1: The most important characteristics of Creative Commons licenses

Creative Commons licenses have several characteristics. These characteristics can be deduced from the last definition that we presented, as follows: CC licenses are wide-ranging because it falls under its umbrella, mainly copyright, and its scope also extends to rights related to copyright, such as broadcasting, audio recording, and performance rights. (Seville, 2016, p:51) The entry of rights of a special or unique nature resulting from the databases is also taken into account (Derclaye, 2008, p:52).

From this we conclude that the framework of CC licenses is broad and includes many rights within it. On the other hand, CC licenses are continuous because their implementation takes a period of time. In other words, time plays an important role in the implementation of CC licenses and an element of it. Therefore, these licenses are not executed once, but multiple times. In addition to the above, the public benefits from the work within a period of time in accordance with the terms of the CC licenses, which corresponds to the period of legal protection of financial rights over the work. After the end of this period, the author's work becomes available to everyone, because this work enters the public domain and there is no need for the author's approval.

In addition to the characteristics of CC licenses, they are flexible, which led to the speed of their spread significantly. This flexibility can be seen



through the existence of several types of CC licenses that are available to everyone and anywhere in the world, according to strict legal controls that are compatible with the rights of authors. (Guibault, 2009, p:75) There are several types of CC licenses designed by CC. (namely: CC BY, CC BY-SA, CC BY-ND, CC BY-NC, CC BY-NC-SA, And CC BY-NC-ND; see in details, Collins, Milloy and Stone, 2010, 2; Kreutzer, 2011, p:29; Brown, 2018, p:52; Misra, 2020, 198; Hietanen, 2007, p:517; Jumde and Kumar, 2019, p:70) The flexibility of CC licenses is also evident because they contain the condition of divisibility, so that only the invalid condition or provision is canceled while preserving the other terms and conditions. What greatly increases the flexibility of Creative Issues licenses is that the legal rules required by the law applicable to the license are not violated, which is clearly confirmed by these licenses.

The CC licenses are typical licenses, meaning that they are within a specific unified template and style. (Herkko, 2007, 25; Makhinchuk, 2020, 4) The author can choose what parts of his work will be presented to the public. Whoever wants to benefit from the work and use it is committed to accepting the terms of the license completely verbatim, without addition or omission. On the other hand, the author whose work has been released to the public may not withdraw from it. This characteristic of CC licenses is irrevocable and does not prevent the author from stopping distributing a work, provided that it does not prejudice the right of the licensee to whom the work has reached, because this licensee may have the right to redistribute the work in accordance with the terms of the license (Sulistianingsih, 2019, p:40; Loren, 2007, 318).

Finally, it must be noted here that CC licenses are non-exclusive, as these licenses allow the licensed author to re-license the use of the used work to other users. The author under non-exclusive licenses enjoys the right to re-license the work to use it multiple times for other licensees under licenses different from the CC licenses, and the licensor has the right to use the work under the multiple, dual license. On the other hand, there are also exclusive licenses in which the licensee is prevented from re-licensing to anyone (Strowel and Vanbrabant, 2013, p:35).

2. Licensee Obligations under Creative Commons Licenses

Creative Commons licenses have implications for licensees that take the form of obligations. In this context, the licensee is bound by several obligations arising from obtaining a CC license.



1/2. Obligation to pay the specified fee and to assign the work to its owner, while refraining from implying that he obtained the support or endorsement of the licensee:

In principle, CC licenses contain works that are presented to recipients without payment for the use and use of these works; for free. On the other hand, there is nothing to prevent the licensee from stipulating a fee for those who wish to benefit from his work. This consideration may be determined by a lump sum or by specifying a percentage so that the licensee is obligated to meet this amount. In this context, the licensee must pay the consideration, upon the initial offering of the work, in order to be able to obtain the rights stipulated in the CC license.

On the other hand, a CC license may give the licensee the right to re-share the work or works derived from this work; the licensee is obligated here to attribute the work to its owner in accordance with the attribution condition. (Fitzgerald, 2007, p:6) In this field, the licensee under the CC licenses is obligated to identify the author, a notice indicating the license, the waiver of warranties, the copyright notice, the unified source identifier or a hyperlink, and the reference to the licensed materials in accordance with the CC license and the amendments contained in these licensed materials (Jenifa, 2022, 4).

The licensee is also obligated not to imply that the licensee endorses or supports him in the use of the licensed material. In other words, when a Licensee obtains a CC license, it does not entitle the Licensee to the Licensee's endorsement of the use of the Licensed Material (Schonwetter, 2011, p:22).

2/2. Commitment to the limits of participation and not hinder or restrict the subsequent recipient of the work:

As previously mentioned, the licensed author's recourse to CC licenses allows him to transfer some of his rights to the work so that the licensee can share it with him. The Licensor reserves its other rights outside of the CC licenses. In this context, there is a difference between CC licenses in terms of the scope of the licensed rights, but with a general framework in which CC licenses participate in the exercise of exclusive rights owned by the licensed author; and a special framework (Guibault Lucie and Hugenholtz, 2006, p:332).

In other words, there is a general framework for participation as well as a specific framework. With regard to the general framework of CC licenses, there are rights in most of these licenses, so that these rights represent the minimum that the licensee must offer to participate in order to be before a CC license. If these rights are not available, they are not considered as CC



licenses. The licensee has the right to use the work, share it with the public, copy it, modify it, build on it, and produce derivative works from it.

As for the private framework, it includes rights to share it, but CC licenses differ. The scope of participation here varies according to CC licenses. Where there is a no-derivative clause, the licensee is prohibited from sharing derivative works, modifications, or contributions produced in accordance with the original work. This condition is found in licenses for the author's attribution to prevent derivation, as well as in non-commercial attribution, to prevent derivation.

In addition to the above, the condition of non-commercial use, (Metzger and Heinemann, 2015, 12) according to which the licensee is bound when copying or sharing the licensed materials, may be for non-commercial purposes. Likewise, when producing, copying, or sharing works developed or derived from the original work, for non-commercial purposes. What is meant by non-commercial use here is the use that does not seek monetary consideration or commercial benefit. In other words, the exchange of licensed material with other copyright material, by any means, provided that such exchange does not have any material benefit.

It must be emphasized that the condition of non-commercial use represents a restriction on the licensee and not on the licensor, because the licensor can offer his works under CC licenses for a fee. The criterion taken into account here is the primary purpose for which the work has been used. The requirement of non-commercial use does not affect the exceptions provided by copyright laws. On the other hand, non-commercial use may not be permissible according to the right of privacy and not on the basis of copyright.

There may be a similar licensing clause under which the licensee is obligated to use the same license by offering modified or derivative works of the original work or a compatible license. In this regard, the licensed author guarantees that the rights licensed in accordance with the basic license remain valid for all modified or derivative works, regardless of the multiplicity of uses of the work, and even regardless of the length of use of the work during the period of legal protection for the rights contained in the works that have been its license.

Finally, it must be noted here that the licensee undertakes not to obstruct or restrict the subsequent recipient of the work (Schonwetter, 2011, p:27). In this context, the licensee may not place additional or different conditions on the licensed materials or put in place technological measures that lead to hindering any other recipient of the licensed materials.

**Conclusion:**

This research article dealt with the Legal aspects of the licensee's obligations according to the CC licenses and their relationship to copyright. During this research, we shed light on the concept of CC licenses, the characteristics of CC licenses, the licensee's obligations under CC licenses, and the relationship between CC licenses and copyrights. This research comes out with several results and recommendations as follows:

Results:

- The issue of CC licenses is one of the very important topics in our time. CC licenses are a new mechanism and an unconventional type of licensing on copyright. Especially that the author may fear infringement of his exclusive rights after granting him CC licenses to others.
- CC licenses are a modern convention. The idea of these licenses is based on the licensor licensing to the licensee some rights over the work, while the licensor retains the other exclusive rights.
- Creative Commons licenses are of great importance both domestically and internationally. These licenses encourage the provision of knowledge in a legal way, and there are many licensed works on the Internet under the CC umbrella. The idea of CC licenses came as a result of technological developments and means.
- At first glance, it appears that there is a conflict between CC licenses and the author's exclusive rights over his work, because these rights allow the author to prevent others from attacking his work, whether by sharing, modifying, or benefiting from it except after obtaining his consent. But in fact, the CC licenses came only in order to avoid possible conflicts between what the Internet opened for sharing innovations and the author's rights. The main objective of CC licenses lies in the work of its twin by giving the public the freedom to use the creative works of the author via the Internet and without obstacles while preserving the exclusive rights of the author.
- Creative Commons licenses do not at all target copyright infringement as intellectual property rights. On the contrary, these licenses seek to preserve them by allowing any author the opportunity to share his work with others legally.
- There are many definitions of CC licenses, but we came to define them as legal means that allow each creator, on a large scale, on a continuous and flexible basis, to involve others, according to certain models, in exercising some rights on his work, while the creator retains the rest of the other rights on an exclusive basis.



- Creative Commons licenses have several characteristics: CC licenses are broad, perpetual, flexible, modular, and non-exclusive.
- The licensee is bound by several obligations arising from obtaining a CC license. The licensee undertakes to pay the specified fee and assign the work to its owner, while refraining from implying that he has obtained the support or endorsement of the licensee.
- The licensee is committed to the limits of participation and not to hinder or restrict the subsequent recipient of the work. There is a general scope for participation as well as a special framework.

Recommendations:

- We recommend that CC licenses be broadly introduced in intellectual property laws because they play a major role in copyright protection. Because these licenses work in tandem by giving the public the freedom to use the creative works of the author through the Internet without hindrance while preserving the exclusive rights of the author
- We recommend a clear definition of CC licenses.
- We recommend the concerned authorities, sectors, and civil society organizations related to CC licenses to promote them more.
- We recommend electronic platforms and publishers to provide the opportunity for authors to publish their books in an easy and accessible manner through CC licenses.
- We recommend that state governments support the option for authors to publish their books/content through CC licenses.
- We recommend various other legal tools to be exploited on the basis of which intellectual property rights can be protected in a way that leads to a knowledge community service.

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