



The Legal Services Organization's
Guide to Copyright Law
(& How to Make it Work For You)

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Chapter 1: Copyright basics

What copyright is

In its most basic definition, copyright law is a set of automatically-conferred rights designed to reserve a creator's rights to his or her own original works. Of course, there are a number of words in that sentence which are open to interpretation. Let's take a look at what [the Copyright Act](#) (1976) says about each.

Rights. There are two types of "rights" to define and consider here: economic and moral. If a creator has economic rights to his or her work, they have the right to get paid when other people utilize it in some way (see below for specific uses that are and are not allowed). If a creator has moral rights to his or her work, they have the right to allow or disallow use of their work as they see fit. This moral right is very weak under US copyright law; almost all rights granted are economic.

This distinction between economic and moral rights is important in US copyright law because of the way the Copyright Act lays out a creator's rights. The Act gives creators the right ([in §106](#))

- “(1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted works publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.”

By law, the creator alone possesses each of these six exclusive rights. He or she can authorize others to, for example, reproduce recordings of their music; but each of these rights begins with the creator of the work. These are purely economic rights.

These rights last for as long as the creator is alive, plus 70 years; in the case of a joint work, rights last for the lifespan of the last surviving creator, plus 70 years. If a work is “made for hire” – which most works for a legal aid organization probably will be – the copyright endures for a term of 95 years after it was first published.

A “work for hire” is basically what it sounds like: work made by an employee or contractor for pay. The definition can get tricky in some cases, but essentially it grants rights to the employer or commissioner of the work, not the actual artist. For more, see the guide by the US Copyright Office on [“Works Made for Hire.”](#)

Finally, works to which no one holds rights, or whose rights have expired, are said to be in the public domain, and can therefore be used by anyone at anytime.

Works. From the Copyright Act itself ([§ 102\(a\)](#)), copyright law protects

“original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.”

What copyright isn’t

Furthermore, the Act ([§102\(b\)](#)) states that

“In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work” [italics added by author].

In other words, you can’t copyright an idea (or a concept, or a process, and so on). So painting can’t be copyrighted, but paintings can.

The middle ground: fair use

Most of what we’ve looked at so far works in the favor of the creator, controlling their works from being used or claimed by someone who didn’t create them. For a culture to grow and thrive, however, there’s a necessary degree of interdependence – that is, we build

off of those who came before us. No work is created in a vacuum, and therefore to foster continued creativity and innovation, copyright laws are not absolute. That middle ground, where the original creator's rights meet a new creator's needs, is called fair use.

Fair use as defined in the Copyright Act ([§107](#)) includes use for

“purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.... In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include –

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.”

Because there are so many factors to consider, decisions on fair use (when they're brought to court) are done on a very case-by-case basis. Each of the factors listed are weighed against one another to reach a decision. Let's take a look at each of these in turn.

(1) Purpose and character of the use. This factor includes both what a work is literally used for (examples of news reporting, education, and criticism are given), as well as whether it is commercial or noncommercial. Most uses are pretty self-explanatory, but the “comment and criticism” part of the Act frequently sees controversy. Likewise, the line between commercial and noncommercial can get hazy, so we'll look at that too.

“Comment and criticism” typically refers to a parody or a satire of a work. A parody is a work which comments on or criticizes itself (see below for an example), while a satire is a work which comments on or criticizes something external (for example, *Saturday Night Live* skits).

The case [Campbell v. Acuff-Rose Music \(1994\)](#) is a great example of parody as fair use. Acuff-Rose, which owned the rights to Roy Orbison's 1964 ballad, “Oh, Pretty Woman” sued the rap group 2 Live Crew for copyright infringement in their 1989 song “Pretty Woman.” The song followed the general tune and beat of the original, but with lyrics changed to reflect an attitude of misogyny rather than admiration. Ultimately, the court ruled that because the use of the song was “transformative,” in that it altered the meaning of the original and was critical, it could qualify as fair use.

As a general rule, works that use portions of previous works to say something novel, or to comment on the earlier work itself, are considered “transformative,” and are therefore protected by fair use.

In some cases, an exact copy of the original can even be considered “transformative,” and therefore, fair use. The *purpose* of the use is what’s really being considered here, not the exact *form* of the works. This was illustrated by the case [Perfect 10 v. Google](#).

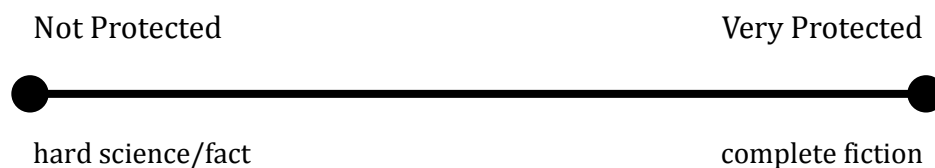
Perfect 10, a company which sells photos of nude models, sued Google in 2006 because small, “thumbnail” versions of its images were appearing in Google image searches. Clicking on the image took searchers to Perfect 10’s website, and so was not as controversial as Google’s storage of the thumbnails on their own servers.

Ultimately, though, the Court ruled that “Google’s use of thumbnails is highly transformative” and that “a search engine provides a social benefit by incorporating an original work into a new work, namely, an electronic reference tool” (p. 15468). Even though Google stored and displayed exact replicas of Perfect 10’s images, they were put into a “a new context to serve a different purpose” (p. 15469). The public benefit aspect of Google’s image search service was a major factor in the decision.

At first glance, the issue of commercial versus noncommercial use of a work may seem pretty cut-and-dried. Creators and users both generally agree that uses that earn users money or involve advertising are commercial, while use by individuals, organizations, or for charitable purposes tend to be (but aren’t always) noncommercial.

There are however many cases in which creators and users don’t see quite eye-to-eye; for instance, uses by individuals for private or personal use. In these cases, users tend to see their use as less commercial than creators do. Commercial and noncommercial are not polar opposites, but rather opposite ends of a continuum of commerciality. For more, see [Creative Commons’ report on “Defining Noncommercial.”](#)

(2) Nature of the work. This factor also works on a continuum, between hard fact and complete fiction. Essentially, the more fact-based or “scientific” a work is, the more available it is for fair use. The more a work is the product of imagination or fantasy, the more protected it is by copyright.



(3) Amount and substantiality of the portion used. This one seems fairly simple – if a user only incorporates 10 seconds of a 2-hour movie into his or her new work, they’re probably not trying to claim it as their own or make a profit on the clip alone, and it’s probably fair use. The certainty with which one can call it fair use drops as the proportion of the work that is incorporated rises, but there’s no automatic cutoff. As Justice Souter wrote in the opinion for [Campbell v. Acuff-Rose](#), “the extent of permissible copying varies with the purpose and character of the use.”

Also important is the “quality and importance” of the materials that are copied. Copying the “heart” of a work; that is, its most essential or recognizable elements, is much less clearly fair use than is copying peripheral or incidental material.

Of course, there are exceptions. For instance, 2 Live Crew used a large portion of Orbison’s “Oh, Pretty Woman,” including the “heart” of the song. Nevertheless, the Court ruled that “context is everything,” and that “parody’s humor... necessarily springs from recognizable allusion to its object through distorted imitation. Its art lies in the tension between a known original and its parodic twin.” In other words, had 2 Live Crew *not* copied heavily from the Orbison song, the meaning of their own song would have been lost. Parodies in particular frequently have a bit more license to copy from existing works because of this.

(4) Effect of the use upon potential market value. Basically, this factor explores whether the new work is likely to replace the old in the market. If it’s a similar enough work aimed at the same demographic, there’s a decent argument that the new work will result in market harm for the original. However, if the new work is transformative enough to target a new audience, there’s a lesser argument for market harm.

In [the Campbell v. Acuff-Rose case](#), the Court speculated that it was unlikely that a Roy Orbison fan would buy 2 Live Crew’s song over the original. “[I]t is more likely that the new work will not affect the market for the original in a way cognizable under this factor, that is, by acting as a substitute for it.” Therefore, this factor was pretty strongly in the favor of 2 Live Crew.

In addition to parodies and satires, fair use is also helpful in protecting incidental use of copyrighted material. For instance, [“Bound by Law?”](#) a copyright-themed comic book developed by the Duke Center for the Study of the Public Domain, features Akiko, who wants to make a documentary about New York City. Copyrighted material is all around her – jazz buskers, Broadway theaters, art galleries, TV shows playing in greasy diners – and she’s overwhelmed by the amount of material she’d have to cut if she obeyed strict copyright laws.

Luckily, asserting fair use could help her keep much of the “sights and sounds” of New York in her documentary, because the use is incidental. Fair use is not ironclad – the copyright

owner can still take you to court to challenge your fair use, which can be costly even if you're in the right – but it's usually a pretty good guess. It can help to ask the rights holder for permission, but it's not necessary (you don't have to have permission to qualify as fair use, though it can go a long way to showing that you have "good faith").

There are, however, some drawbacks to relying on fair use. The main problem is the fact that fair use is decided on a case-by-case basis. This means that even if your use of material is fair, the creator can still challenge you in court. Even if you win the case, it'll cost you time and money. And, because fair use is highly subjective (and the judge might not agree with your interpretation), you might not win the case at all. It's unlikely that you'll be challenged, but if you are, it will be a pain in the you-know-what.

Bonus Fact on International Copyright:

It's worth noting that under the [Berne Convention](#), copyright law is internationally valid. It's a bit messy transitioning from one legal system to the other, so copyright law is frequently "ported" into the different systems. Even if it's not ported, though, a copyright in one country is legally valid anywhere in the world. Although The US one of only two countries with Fair Use. Most other countries have very few exemptions to copyright law.

Chapter 2: Creative Commons

Since reliance on fair use can be kind of like playing lawsuit roulette, finding content that's actually licensed for your use can be a much safer route. This is where Creative Commons comes in.

According to [their mission](#), Creative Commons “develops, supports, and stewards legal and technical infrastructure that maximizes digital creativity, sharing, and innovation.” To do this, they provide free licenses that work within copyright laws to allow creators to clarify which rights they wish to reserve and which they relinquish regarding their work. [It's easy to generate and use these licenses](#), so I'd strongly suggest slapping one on your website and any other promotional or public materials you create.

On the flip side, it's fairly easy to search for material with a Creative Commons license – so you know that it's okay to reuse. See the next section for more on how to do it.

About the licenses

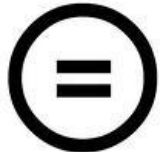
In the meantime, let's take a look at the different Creative Commons licenses available. Depending on the options you choose, your license comes with a series of icons (and accompanying acronyms) that tell potential users where the creator stands on different issues of copyright.



Share Alike (SA) – if this icon is present, it means that users are free to reuse, build upon, and share the material in any way they see fit, as long as they license their work with the same freedom to other users. It's often called “copyleft.”



Attribution (BY) – this icon means that users are free to reuse, build upon, and share the material in any way they see fit, even commercially, as long as they credit the creator of the work. When used in isolation, it's the most accommodating of the Creative Commons licenses.









No Derivatives (ND) – the use of this icon means that users may use the work for commercial or noncommercial purposes, but have to preserve it as a whole; it can't be tweaked or changed in any way. Under fair use, users can still create parodies from such a work.



Non Commercial (NC) – if the creator includes this icon, it means that users can reuse, build upon, and share the material, as long as the use is not commercial.

[To create a license](#), a creator just answers a few questions to generate the series of icons which will suit them best. The combinations offered by Creative Commons include (preceded in shorthand with “CC” for Creative Commons):

	CC BY (Attribution)		CC BY-NC (Attribution-NonCommercial)
	CC BY-SA (Attribution-ShareAlike)		CC BY-NC-SA (Attribution-NonCommercial-ShareAlike)
	CC BY-ND (Attribution-NoDerivs)		CC BY-NC-ND (Attribution-NonCommercial-NoDerivs)

Alternately, a creator can decide simply to dedicate their work to the public domain. Through Creative Commons, the applicable shorthand is [CC0](#), or “No Rights Reserved,” and the icon looks like this:



Choosing a license

When it comes to choosing a license for your organization’s work, you know best what you need. However, LSNTAP recommends using either CC BY or CC BY-NC to promote the sharing and spreading of information. CC BY is the most open license offered (aside from CC0), and CC BY-NC might be a good choice if you’re afraid that predatory groups will find your information and attempt to sell it, instead of offering it for free, to unwitting consumers.

Remember when making this choice that you can always grant more permission, but cannot take back permissions already granted. So, you might err on the side of caution and choose a more restrictive license.

At the same time, consider whether you want your organization to act as a “gatekeeper” for the information you’re publishing. Do you want anyone and everyone who wants to use your work to have to come to you to ask permission? Will it make you feel more secure or simply bombarded? If you’d rather not have to answer to every request, choose a less restrictive license.

Parts of a license

Whatever license you choose, it will come with [three “layers” of the license](#): the Legal Code, the Human Readable, and the Machine Readable. The Legal Code is – you guessed it – the fully legalese version, while the Human Readable (or Commons Deed) is the plain-language

version, summarizing the important points of the license in a way that most people can understand.

You are free:

- to Share** — to copy, distribute and transmit the work
- to Remix** — to adapt the work
- to make commercial use of the work



Under the following conditions:



Attribution — You must attribute the work in the manner specified by the author or licensor (but not in any way that suggests that they endorse you or your use of the work).

With the understanding that:

Waiver — Any of the above conditions can be **waived** if you get permission from the copyright holder.

Public Domain — Where the work or any of its elements is in the **public domain** under applicable law, that status is in no way affected by the license.

Other Rights — In no way are any of the following rights affected by the license:

- Your fair dealing or **fair use** rights, or other applicable copyright exceptions and limitations;
- The author's **moral** rights;
- Rights other persons may have either in the work itself or in how the work is used, such as **publicity** or privacy rights.

Notice — For any reuse or distribution, you must make clear to others the license terms of this work. The best way to do this is with a link to this web page.

The Commons Deed for the license on this document (CC BY).

Finally, the Machine Readable content contains metadata in a specific format (Creative Commons Rights Expression Language, or CC REL) that software systems, search engines, and other pieces of technology can “read.” This enables a user’s computer to categorize works by license, and therefore, enables the user to discover usable works. If a Creative Commons license is not embedded in the site or work, it can’t be searched with licensing filters. See the next chapter for more on how to use this feature to find usable works.

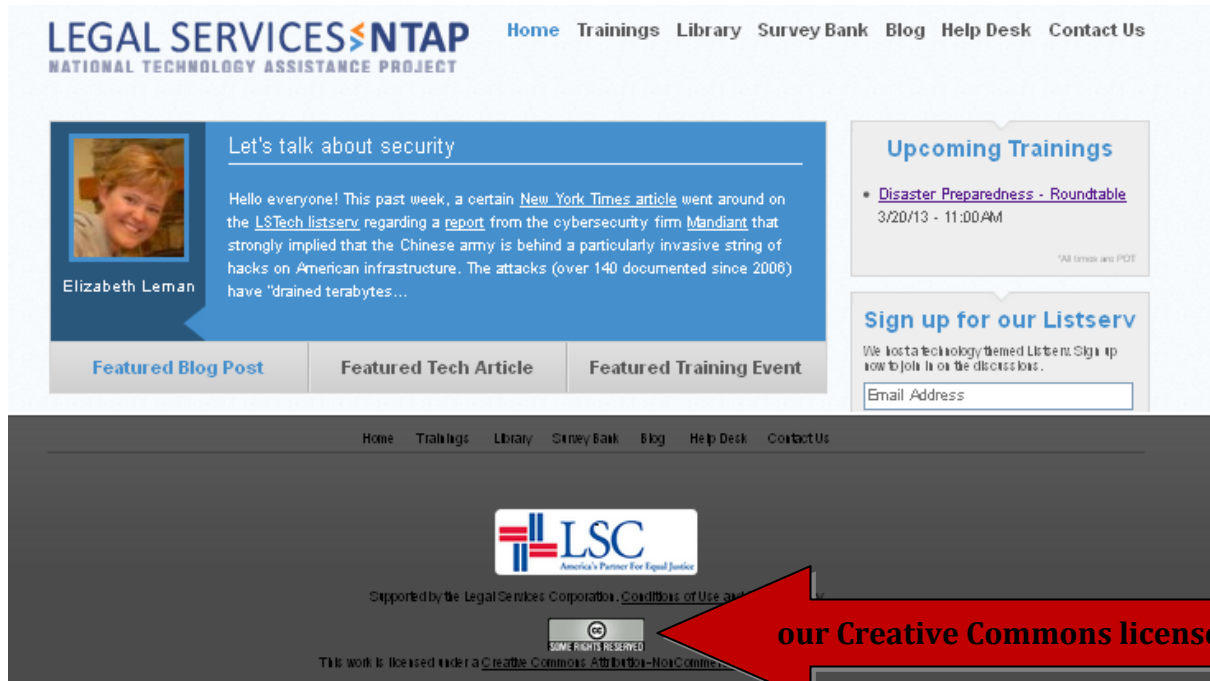
Creative Commons licenses are a great tool for both releasing your own work and for finding works licensed for use from others. However, it’s worth noting that the licenses are non-revocable. That is, once you release work under a Creative Commons license, you can’t change it. You can stop offering the work at any time, but users can still legally use copies still in circulation under the license with which they were released.

How to label your work with a Creative Commons license

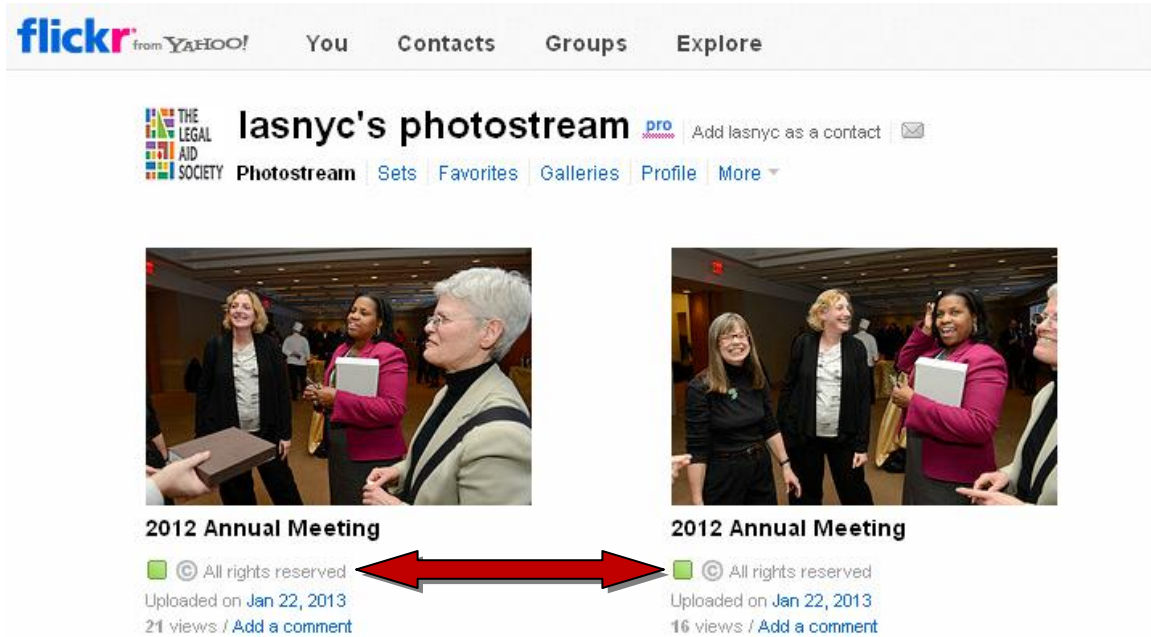
Affixing a license to your work on the Internet is pretty easy. Most places you'll upload to (Flickr, YouTube, etc) will have a way to specify which license you'd like, or you can embed it in the work itself. For example, the Northwest Justice Project embeds Creative Commons icons in its videos at the end of the presentation.



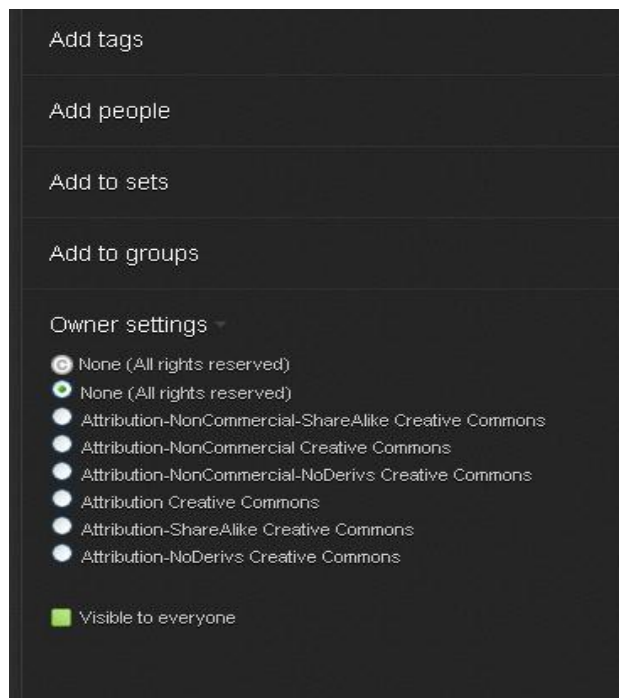
Similarly, LSNTAP embeds a license in the footer of our website:



Most legal services organizations on Flickr, such as the Legal Aid Society of New York City, seem to choose the “all rights reserved” option for licensing.



This option is fine, but remember that you *can* license others to use your work if you choose to. When you're uploading, just click “edit” next to “None (All rights reserved)” under “Owner Settings” on the left-hand side of the screen, and you can choose from a variety of Creative Commons licenses.



Chapter 3: How to find and use content

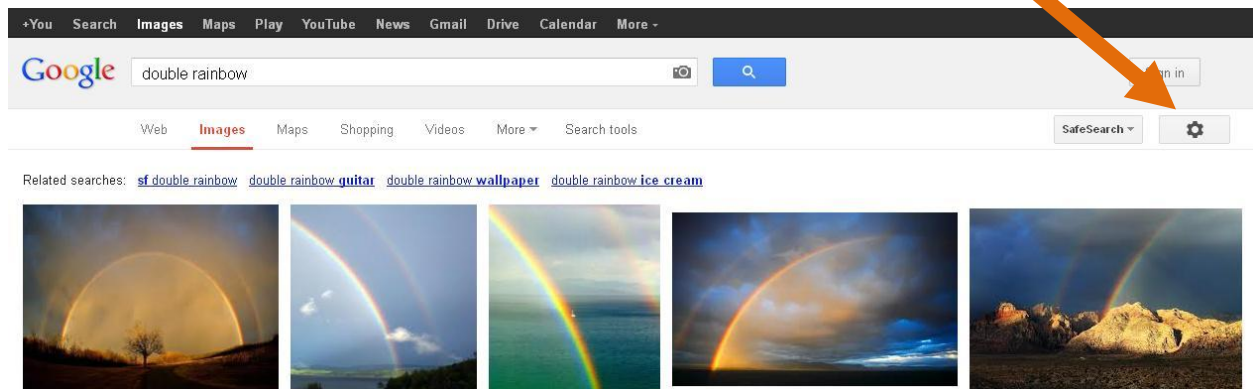
Now that we've covered all that background information, how can you actually find content that you're able to use? Basically, you'll just need to slightly modify the way you search.

Creative Commons search

You can search directly from the Creative Commons website when you visit search.creativecommons.org. From the site, you enter your search terms, specify whether you intend to modify the work or use it for commercial purposes, and choose what type of media you'd like (images, videos, music, etc). Click "[CC Search](#)," and presto! Usable content.

Google

You can search for Creative Commons-licensed content on [Google](#), but for reasons of its own, Google makes this a bit tricky. You will need to conduct an Advanced Search; to do this, click on the gear or "Settings" icon at the top right-hand corner of any Google search page (this works with Images as well as a regular Search).



Choose "Advanced Search," and specify anything you'd like, but make sure to scroll down to "usage rights" at the bottom. From here, choose whichever level of licensing is appropriate for your planned use ("free to use or share;" "free to use or share, even commercially;" and so on). Click "Advanced Search," and everything that comes up is fair game for you!

If you're looking for a specific type of content and aren't finding what you need with Creative Commons or Google, you can try one of these other sites. For more, see Chapter 4 ("Resources").

Audio

- [TheFreeSoundProject](#) – a database of sound effects, all released under Creative Commons licenses (which are listed on the right-hand side of the page for each effect).

- TribeOfNoise.com – a social networking site based around artists sharing their music, all under a CC BY-SA license (meaning attribution-share alike; see their [FAQ](#)). I like the way the search works – you specify audio or video track, a genre of music, and an emotion that goes with it. You do have to create a (free) account to use it.

Images

- Flickr – a great go-to database for images; use the [Advanced Search](#) to find Creative Commons-licensed content.
- EveryStockPhoto.com – over 1.4 million photos for you to use; click “Advanced Search” to the right of the search bar to filter by license.
- OpenClipArt.org – all clip art is in the public domain and may be used for free with no restrictions.

Text

- IntraText.com – features thousands of documents from 900 BC on up to the present day; unless otherwise noted, they’re licensed under CC BY-NC-SA.

Videos

- ShareLawVideo.org – a database of videos and video clips specifically for legal aid; all are available for use in legal aid.
- YouTube – another great resource; use the “Filters” dropdown menu to choose “Creative Commons” (located under “Features”) to search for usable content.
- Vimeo – a more artsy version of YouTube; to search for Creative Commons-licensed content, click “Show Advanced Filters” on the right-hand side of a search page, and choose the applicable license.

General searches

- [SpinXpress Get Media Search](#) – use this tool to search a variety of sources (Flickr, the Internet Archive, and more) for images, video, and audio under a license you choose.

Providing attribution

Giving the proper credits for works you’ve used under an attribution license is fairly easy. All you need are the author’s name and type of license. Photos found through Flickr and used on LSNTAP’s Facebook page, for example, are simply captioned with “Photo by [author’s username] @ Flickr under [license type].” Similar captioning on works you use will fulfill the requirements of an attribution license.

Chapter 4: Resources

General and background information

["Bound by Law?,"](http://web.law.duke.edu/cspd/comics/digital.php) a comic-format review of copyright law by Duke Law School Center for the Study of the Public Domain, available at web.law.duke.edu/cspd/comics/digital.php.

[Campbell v. Acuff-Rose Music \(92-1292\), 510 U.S. 569 \(1994\)](http://www.law.cornell.edu/supct/html/92-1292.ZO.html), the case pitting Roy Orbison's "Oh, Pretty Woman" against 2 Live Crew's parody, "Pretty Woman," available at www.law.cornell.edu/supct/html/92-1292.ZO.html.

[Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code](http://www.copyright.gov/title17/92chap1.html) (also known as the Copyright Act), available at www.copyright.gov/title17/92chap1.html.

[The Creative Commons website](http://creativecommons.org), available at creativecommons.org.

["Defining Noncommercial,"](http://wiki.creativecommons.org/Defining_Noncommercial) the report on a study conducted by Creative Commons into how to define the difference between commercial and noncommercial uses of preexisting works, available at wiki.creativecommons.org/Defining_Noncommercial.

["How to find Creative Commons licensed materials for Teachers and Students,"](http://www.smartcopying.edu.au/scw/webdav/shared/How_to_find_CC_material_website.pdf) from the ARC Centre of Excellence for Creative Industries and Innovation through Creative Commons Australia and the Copyright Advisory Group of the Ministerial Council of Education, Employment, Training and Youth Affairs, available at www.smartcopying.edu.au/scw/webdav/shared/How_to_find_CC_material_website.pdf.

["NJP: Finding Music for Web Videos \(& Fending Off False Copyright Claims\),"](http://lsntap.org/blogs/njp-finding-music-web-videos-fending-false-copyright-claims) by Daniel Ediger of the Legal Services National Technology Assistance Project, available at lsntap.org/blogs/njp-finding-music-web-videos-fending-false-copyright-claims.

[Perfect 10 v. Google Ninth Circuit Opinion \(Amended\)](http://www.eff.org/node/55125), the case concerning Google's storage and display of thumbnail versions of Perfect 10's nude model images in its image search service, available at www.eff.org/node/55125.

["Works Made for Hire,"](http://www.copyright.gov/circs/circ09.pdf) a guide written by the United States Copyright Office about copyright issues with works produced by employees or contractors for pay, available at <http://www.copyright.gov/circs/circ09.pdf>.

Finding (more) Creative Commons-licensed content

(all lists from [Mashable](#) and [Sitepoint](#))

Audio

- [ArtistServer.com](#) – search by music type and download music for free; not all music is available for use. Check each artist’s copyright information, which is readily available.
- [ccMixer.org](#) – this site is geared toward people who want to remix or mashup audio tracks, but all their content is licensed for you to use with Creative Commons.
- [Jamendo.com](#) – full albums or single songs you can listen to and download for free; a Creative Commons license is at the bottom of each artist/album page and all that I’ve seen are CC BY-NC-SA (see above to decode that!).

Images

- [Geograph.org.uk](#) – a project attempting to photograph the entirety of the British isles; if you need a picture of the UK, this is your place. Each image is licensed under Creative Commons, but it varies by image.
- [PhotoEverywhere.co.uk](#) – images of locations around the world, all licensed under CC BY.
- [AnimalPhotos.info](#) – just what it sounds like; images of all kinds of animals, all licensed under either CC BY or CC BY-SA. Each individual image will specify which of these licenses it holds.
- [CarPictures.cc](#) – like the site above, images on this site are licensed under either CC BY or CC BY-SA; the individual image specifies which.
- [Compfight.com](#) – this site, while not affiliated with Flickr, is largely dependent on it to quickly find images for blogs, research, or other Internet use. Within a search, you can choose “Creative Commons” on the left-hand side to filter results. The first few rows of photos at the top of each results page will be stock photos for a cost; under that are free photos.
- [Creativity103.com](#) – a stock photo database; all images are licensed under CC BY.
- [wikiHow.com](#) – best known for their collection of how-to articles, but each of those articles feature a variety of images, all licensed under Creative Commons. You can check on the specific license on the right-hand side of the page under “Licensing/Attribution” when you click on the image.

Videos

- [OurMedia.org](#) – a video-specific site run by Internet Archive; all videos are clearly labeled with the applicable Creative Commons license, as well as a brief description of what you may and may not do with it.

General searches

- [Freebase.com](https://www.freebase.com) – this is an odd kind of search engine to use, organized by topic rather than type of media; however, all content is licensed under CC BY, so it's free to use. Check it out to see if you find anything good but I'd suggest relying on another site or search engine to regularly find content.
- [Wikimedia Commons](https://commons.wikimedia.org) – the “Creative Commons arm” of Wikipedia clearly labels all content with a license; or, it's in the public domain.
- [Archive.org](https://archive.org) – a great resource (hosts the Wayback Machine, an archive of the internet, as well as quite a bit of music, texts, images, and video), but can be hard to search. Use [SpinXpress](https://spinxpress.com) to search; select “Internet Archive” as the source.