

**LAUNCHING CREATIVE COMMONS
TAIWAN: BACKGROUND, EXPERIENCE,
AND CHALLENGE**

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Résumé

Une chronologie du projet Creative Commons Taiwan jusqu'à son lancement en septembre 2004 permet de décrire le contexte et l'expérience de l'introduction des licences Creative Commons à Taiwan. Les auteurs décrivent aussi l'évolution de la loi taiwanaise sur le droit d'auteur. Le lancement de Creative Commons à Taiwan est considérée comme un succès, et l'organisation de cet événement est brièvement évoqué. Nous envisageons maintenant de travailler au développement de ces licences dans le cadre de la collaboration avec d'autres institutions gouvernementales et organisations de la société civile.

Abstract

We give a chronology of Creative Commons Taiwan, up to its launch in September 2004, and provide the background and our experience in introducing Creative Commons licenses to Taiwan. We also give an account of the evolution of Taiwan's Copyright Act. The launch of Creative Commons Taiwan is judged by us to be quite successful, and the planning of this event is briefly outlined in this paper. We now anticipate Creative Commons Taiwan facing the challenge of working closer with other government bodies and civil organizations in the further promotion of Creative Commons licenses in Taiwan.

Taiwan's Copyright Act

The Copyright Act used in Taiwan was first enacted in 1928, and the latest amendment to the Act was made on September 1, 2004. From 1928 to 2004, the Act was amended several times in line with the trend toward international economic and trade cooperation, and especially to meet the requirements of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organization (WTO). The most significant change was made on July 10, 1985 when the Act was amended to grant copyright automatically to a work from the time it is created. Before this amendment, a work was only protected if it was registered with the Intellectual Property Office, Ministry of Economic Affairs. However, the requirement to register copyright was not abolished until January 21, 1998.

The change in the copyright protection period is also worth mentioning. It is often the case that the competent authority of the Copyright Act at the Ministry of Economic Affairs has faced huge pressure from the US Government, especially when draft amendments to the Act have been proposed to the legislature. For example, in order for Taiwan to be removed from the Special 301 Priority Watch List of the United States Trade Representative (USTR), and for Taiwan to make smooth progress in the Trade and Investment Framework Agreement (TIFA) negotiation with the US, the Taiwanese government has made a lot of efforts, especially on copyright laws revisions, to better protect and stronger enforce intellectual property rights in Taiwan.

The US Congress has repeatedly lengthened the terms of copyright. In 1790, the first US federal copyright law protected the author of any book, map, or chart for a term of 14 years, plus a renewable term of 14 years. The 1976 US Copyright Act extended copyright for 50 years after the death of the creator. More recently, under the 1998 Sonny Bono Copyright Extension Act, the period of copyright protection was increased to the creator's lifetime, plus 70 years. As for Taiwan, the first Copyright Act (1928) said that copyright lasted for the creator's lifetime, plus a period of 30

years from the end of the year in which he/she died. In 1992, the copyright protection period was extended to 50 years after the creator's death. If a work is not published until 40 to 50 years after the creator's death, the copyright period commences from the date of publication and lasts for 10 years.

Although on the one hand, as some might suggest, extending copyright protection can increase the motivation to create new works and protect copyright holders' rights more thoroughly, every last use of a work must be allowed by the creator (copyright holder). Furthermore, «all rights reserved» has been the norm in most countries. On the other hand, the continual lengthening of the terms of copyright will gradually diminish the volume of material created, obstruct knowledge accumulation, and harm culture and society development. The founding of Creative Commons is an explicit example of human endeavor in seeking a more reasonable copyright system that would help re-vitalize creative activities.

Open Source Initiatives in Taiwan

In Summer 2002, facing increasing pressure from the legislature on the issues of free/libre open source software (FLOSS), the Executive Yuan (the Cabinet) set up a Free Software Steering Committee under the National Initiatives on Communication and Information (NICI), a strategy-planning government agency, to study and address the issues. As a result, the Committee formulated a national FLOSS initiative, aiming to advance FLOSS development in Taiwan.

The Open Source Software Foundry (OSSF) project is part of the initiative [1]. It has been carried out by the Institute of Information Science [2], Academia Sinica, since early 2003. The purpose of OSSF is to build a Web-based platform where software developers can collaboratively work on FLOSS projects. The functionalities provided by this software foundry may not be that different from those provided by Sourceforge, a popular web site for hosting

open source projects. However, OSSF provides both Chinese and English user interfaces so that FLOSS developers in Taiwan can interact better with one another. OSSF also serves as a bridge connecting government, industry, community, and academia, and offers a range of FLOSS-related technical, operational, and legal assistance.

Academia Sinica is a fully government-funded research institution [3]. It conducts and supports fundamental and cross-disciplinary research activities in mathematical and physical sciences, life sciences, and humanity and social sciences. There are several reasons as why the Institute of Information Science, Academia Sinica (IIS/AS), a basic research institute, has been in charge of OSSF, a software development and service project. Firstly, the institute's research necessarily involves software (in particular, FLOSS), and the institute itself often provides information technology policy advice to government bodies (e.g., NCI). Secondly, since 1998 IIS/AS has helped organize the yearly International Conference on Open Source (formerly the Open Source Workshop) in Taiwan, and is in good contact with many FLOSS developers. IIS/AS can also draw expertise from other institutes in Academia Sinica, hence, is able to address FLOSS issues from a cross-disciplinary perspective.

OSSF is comprised of 3 divisions: The Operations Division, the Technology Division, and the Law and Policy Division. The Technology Division is responsible for building the Web-based collaborative development platform. The Operations Division is in charge of the operation and promotion of OSSF. The Law and Policy Division not only analyzes various FLOSS licenses and studies related policies of other countries, but also develops strategies with the other two divisions for the promotion of FLOSS concept to the public.

Soon OSSF started to notice the development of Creative Commons and the international Commons project (iCommons project). We thought it would be a good strategy to combine our FLOSS effort with the Creative

Commons development. FLOSS licenses are about program code and mostly interest only software developers, but Creative Commons licenses are designed for creative works, such as web site, music, film, literature, etc. and can be more easily understood by most people. By combining the two efforts, the general public would be better informed about FLOSS issues, and FLOSS developers would have more opportunities to work with writers, artists, librarians, and teachers who are interested in open content issues.

At the annual International Conference on Open Source in August 2003, the OSSF Law and Policy Division organized a session on the open content issue. The broader social impact of FLOSS development was, perhaps, publicly discussed for the first time in Taiwan. As well as a discussion about Creative Commons, Shulea Cheang, a distinguished net artist, was invited to present her co-curated work «Kingdom of Piracy», which deals with the idea of open culture in artistic activities.

Before the Launch

At about the same time as the conference, IIS/AS and Creative Commons signed a Memorandum of Understanding and started the Creative Commons Taiwan project. With the help of the OSSF Law and Policy Division, the first draft of the Creative Commons licenses was prepared. However, due to some Chinese character encoding problems, the required online discussion about the localized Creative Commons licenses was postponed for a while. However, Creative Commons Taiwan quickly set up a working site to provide basic information about Creative Commons and stimulate preliminary discussion on the subject [4]. It was not until Spring 2004 that public discussion on the localized licenses officially started.

OSSF first translated the Creative Commons Licenses (hereafter: CC Licenses) into Chinese and presented the translation for public discussion via a mailing list. During the course of translation, several significant changes were

made to comply with Taiwan's Copyright Act. The following are some examples of the changes:

1. In the preamble of the translated Creative Commons Licenses, version 2.0, which is to be used in Taiwan (hereafter: CC Licenses Taiwan v. 2.0), the word «corporation» was replaced by «organization» because in Chinese language «corporation» usually refers to private, for-profit firms. As Creative Commons is a non-profit body, the Chinese word for «organization» is a better word.

2. For the following reasons, the phrases, «public performance, public presentation, public broadcasting, public transmission, and public recitation» were used to represent «public performance» in the CC Licenses Taiwan v. 2.0.

(a) Under the US Copyright Act, the definition of «public performance» includes public performance, public presentation, public broadcasting, public presentation, and public recitation. However, according to Taiwan's Copyright Act, «public performance» only means to perform publicly; to present publicly, to broadcast publicly, to transmission publicly, and to recite publicly is not mentioned.

(b) Article 37 of Taiwan's Copyright Act says, «The economic rights holders may license others to exploit their work. The territory, term, content, method of exploitation, and other particulars of the license shall be stipulated by the parties; particulars not clearly covered by such stipulations shall be presumed to have not been licensed». Therefore, if «perform publicly, present publicly, broadcast publicly, transmit publicly, and recite publicly» are not specifically listed, readers may think the right of public performance granted under CC Licenses Taiwan v. 2.0 only covers its literal meaning.

3. To help Taiwanese licensees understand performance rights more clearly, «BMI» and «SESAC» were removed from the text of article 4(e)(i), and two examples of Taiwan's performance rights groups, «Music Copyright Association Taiwan (MACT)» and «Music Copyright Intermediary Society of Chinese Taipei (MUST)» were used in CC Licenses Taiwan v. 2.0.

4. Taiwan's Copyright Act says nothing about compulsory licensing of web-casting; however, article 26(3) does regulate payment of remuneration when a sound recording is played publicly. Thus, to include the complete concepts of compulsory licensing of sound recordings, the original article 4(f) of the CC Licenses was divided into article 4(f) and article 4(g) in the Licenses Taiwan v. 2.0. Article 4(f) now deals with royalties for publicly performed sound recordings in Taiwan, while article 4(g) is a translation of article 4(f) of CC Licenses v. 2.0.

For the period from August 2003 to the formal launch in September 2004, IIS/AS and OSSF continued to develop a strategy of promoting the FLOSS issues and the open content issues together. Several preliminary promotional events showed that the strategy was quite successful. Here are two examples.

1. An anthropology and digitization project, in the National Digital Archive Program, faced many copyright issues and invited Creative Commons Taiwan to present the concept of open content and to introduce the Creative Commons licenses to its project members. The project leader supported the idea of open content so strongly that, when preparing for the annual conference of the project, he decided to adopt the Creative Commons licenses for the conference proceedings. He then formally invited all the contributors, reviewers, and moderators to license the materials they prepared for the conference under the Creative Commons licenses. Creative Commons Taiwan was also invited to the conference to present the Creative Commons concept as a new licensing model. After the conference, we have answered many inquiries from local publishers, researchers, and educators regarding Creative Commons licenses.

2. Creative Commons Taiwan has been invited to take part in FLOSS community events to introduce the idea of open content. Of all the community events, elementary and

secondary school teachers, who have their own social networks and practical reasons to adopt FLOSS solutions and open content ideas, seem to be the most motivated by the Creative Commons concept. Through such networks and the effort of FLOSS communities in schools, Creative Commons Taiwan has been invited to participate in courseware development seminars organized by normal colleges to further introduce the Creative Commons ideas and licenses to more teachers.

Besides the above 2 examples, there have also been many inquiries from individuals who have browsed the Creative Commons web site and were surprised, perhaps, to find there is an iCommons project in Taiwan. We have also made various formal and informal contacts with many individuals who have showed their interests, but the results have not been as significant as there is no existing network among those individuals for us to advance the promotion.

It is noteworthy that the approach of combining both FLOSS and open content efforts is also recognized by some FLOSS developers in other Asian countries. When OSSF participated in FLOSS workshops and symposiums in Asia, delegates from other countries have often expressed their interest in our experience. It was also significant that Creative Commons Taiwan was formally launched following the 4th Asia Open Source Symposium, which was held on September 1-3, 2004, in Taipei. The launch was announced to all the symposium participants and all are invited to the launch.

The Launch

Nearly 10 months after IIS/AS has joined the iCommons project, Creative Commons Taiwan was officially launched in Taipei on September 4, 2004, right after the 4th Asia Open Source Symposium. The chairman of Creative Commons, professor Lawrence Lessig, was present and delivered a keynote speech. Several press interviews with Professor Lessig were arranged.

Maybe unlike other iCommons projects, Creative Commons Taiwan organized the launch as an interactive artist performance event. Creative Commons Taiwan commissioned a song for the launch from the award-winning singer Yue Hsin Chu. Chu is an icon in Taiwan's pop music scene. The song, «welcome to my song», expresses the will of artists and the difficulties they faced while trying to share their works. The song itself is released under the «Attribution-NonCommercial-ShareAlike 2.0 Taiwan» license. Chu and Creative Commons Taiwan worked together to produce a CC-licensed «welcome to my song» CD album for distribution at the launch. A 40-page brochure introducing Creative Commons and CC licenses was also produced by Creative Commons Taiwan, and the copies were distributed at the launch. The CD and brochure prove to be very popular, and are to be used after the launch for other promotion purposes. The covers of the CD album and the brochure are shown in Fig. 1 and Fig. 2.



Fig. 1. The album cover of the «welcome to my song» music CD. The CD album was produced for the launch of Creative Commons Taiwan. (Album cover designed by Ching-I Roan)



Fig. 2. The cover page of the 40-page Creative Commons Taiwan brochure. The brochure was produced for the launch of Creative Commons Taiwan. (Brochure cover designed by Ching-I Roan)

Shoda Liu, an artist famous for his re-editing and re-mixing a commercial movie series, «the Infernal Affairs», into a parody series titled «CD-PRO2», shared with all participants the challenge he faced while proceeding a fair-use practice of this movie and how creative ideas could be stopped because of copyright concern. Hsueh Heng Chu, who is well-known for his Chinese translation of J. R. R. Tolkien's «Lord of the Ring» trilogy and currently is the major force behind the Chinese language translation of MIT's Open CourseWare, provided a brief introduction to this project.

Many law professors and intellectual property experts attended the launch event. As was just mentioned above, Creative Commons Taiwan produced promotional music

CD, brochure, and T-shirt for the launch. The Creative Commons Taiwan web site was officially announced at the launch as well. More information, in the Traditional Chinese Language, about Creative Commons and Creative Commons Taiwan, as well as the digital versions of all the promotional materials, can be found at the web site. The launch event was reported by many local newspapers and magazines, including the Chinese language version of Scientific American, and was very successful.

It is worth mentioning that within just a month after Creative Commons Taiwan's launch, a commercial CD album was released in Taiwan under the «Attribution-NonCommercial-ShareAlike 2.0 Taiwan» license. The album, «Jesus Rock!!», is produced by Yue Hsin Chu and his musical partner Hsiao Te Fu. This album is now available in many of Taiwan's record stores. Photos of the album package, as well as the CD and license information card found inside the package, are shown in Fig. 3. and Fig. 4.



Fig. 3. The album package of the «Jesus Rocks!!» music CD. This CD album is now commercially available in Taiwan's record stores and is released under the «Attribution-NonCommercial-ShareAlike 2.0 Taiwan» license. (Album package designed by Pop-Music Missionary)

resources. Some of the materials are translated from the original content at the Creative Commons web site at the US. However, many of the materials are locally produced. It includes, for example, the complete MP3 collection of the «welcome to my song» CD album. Fig. 5 shows a «desktop wallpaper» image that can be downloaded from the web site [6]. Both the Taiwan and the US Creative Commons web sites now provide information about CC Licenses Taiwan v. 2.0, in both English and Traditional Chinese Languages, and in three formats (human readable/legal/digital code). Actually, both the Taiwan and US Creative Commons web sites now host the same «select a license» service; the only difference is that the Taiwan site guides users in Traditional Chinese language while the US site guides users in English language [7][8].

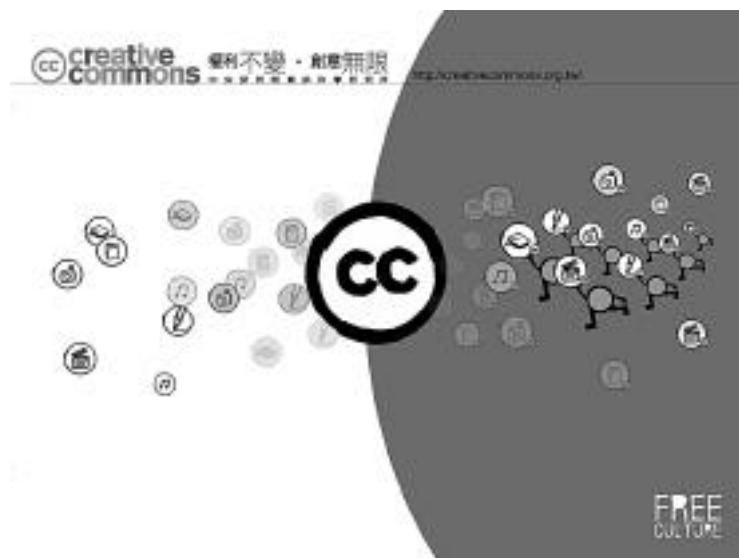


Fig. 5. A «desktop wallpaper» image that illustrates the Creative Commons idea. It can be downloaded from the Creative Commons Taiwan web site. (Graphics designed by Ching-I Roan)

The Creative Commons Taiwan web site is a starting point for people who are interested in the Creative Commons ideas and licenses. It is also a focal point for the development of Creative Commons Taiwan. However, once

we take seriously the issues of getting more people in Taiwan to know and actually use CC Taiwan licenses, it soon becomes clear that the web site alone is not sufficient. Just like Creative Commons needs the iCommons project to reach people outside of US to help seed the concept and implement the practice, Creative Commons Taiwan also needs an effective outreach plan so that the licenses can be more widely used in Taiwan. The outreach will not be successful without the help of many other people, organizations, and government agencies.

With this in mind, we actually invited many key persons to the launch of Creative Commons Taiwan, and we carefully planned the event so that it would generate a lot of interest in the press. For example, we made sure the «welcome to my song» CD album would be produced in time for distribution to the audience and the press. The people from the Intellectual Property Office, Ministry of Economic Affairs (TIPO/MOEA), and from the Computer Center, the Ministry of Education (CC/MOE), are actively invited. The former agency is in charge of copyright issues and policies in Taiwan, and the latter often helps initiate information technology and e-learning projects in elementary and secondary schools. Legal scholars and people in the content industries are also invited. For those invitees who did not attend the launch, each of them was sent a promotional package afterward.

Judged from the reaction to the launch, we think the launch is very successful. It generates a lot of interest to Creative Commons licenses. We are now in discussion with TIPO/MOEA and CC/MOE on how to further promote the Creative Commons ideas and licenses. For both TIPO/MOEA and CC/MOE, Creative Commons licenses represent new and positive thinking about the legal sharing and distribution of copyrighted work, and may turn out to be the solutions, or at least good alternatives, to their tasks at hand. For example, TIPO/MOEA can use Creative Commons licenses to educate the public on how to share content legally. It is an improvement over the usual, often

quite negative, anti-piracy campaign it runs. For elementary and secondary school teachers, they often need to produce supplemental teaching aids/materials. From CC/MOE's perspective, Creative Commons licenses can help encourage teachers to widely share, adapt, and distribute teaching materials among themselves (without afraid of violating others' copyrights).

TIPO/MOEA and CC/MOE are representative government bodies that can bring in resources, in terms of additional funding and institution assistance, for the promotion of Creative Commons licenses in Taiwan. Once such government bodies start working with Creative Commons Taiwan to reach more people, however, we envision the associated coordination effort, and the execution of various educational and promotional tasks, may become an issue with IIS/AS, the current host of Creative Commons Taiwan. IIS/AS is an academic institute. It is not experienced with, nor does its mission currently include, educational or promotional duty. Academia Sinica does not offer degrees and its researchers need not teach, for example. IIS/AS may need to actively work with partner organizations, or to recruit new staff, to further promote Creative Commons in Taiwan.

As such, we feel that the challenges Creative Commons Taiwan faces are just starting to unfold. IIS/AS is instrumental in launching Creative Commons Taiwan. But when compared to the afterward task of outreach, the launch seems almost just like a simple step. Before Creative Commons licenses are making broader impact to the Taiwanese society, there remain many more steps.

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[8] <http://creativecommons.org/license/>

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