

**PROPOSED BEST PRACTICE GUIDELINES TO CLARIFY THE MEANING OF
“NONCOMMERCIAL” IN THE CREATIVE COMMONS LICENSES**

The purpose of these guidelines is clarify some of the easier use cases of what does and does not constitute a permitted noncommercial use under the Creative Commons licenses that contain the NonCommercial license element. These guidelines are not intended to be exhaustive but are instead intended to assist creators and users to better understand the scope of permitted uses.

These guidelines apply to those activities that exercise a right licensed under the Creative Commons license, ie. the act of copying a work or distributing a work. It does not apply to an activity that constitutes a fair use of a C-licensed work. It also does not apply if, for example, you use the ideas expressed in a work.

A. Nature of the User:

- (1) Is the user an “allowable NC user” under the noncommercial license condition?
- (a) Individual
 - (b) Nonprofit educational institution/library,
 - (c) Nonprofit organization as defined under US1 or equivalent law, (together with (1) and (2) “allowable NC users”)
 - (d) A copy shop, ISP or similar service provider who, in the course of providing a service at the direction of the allowable NC user, may exercise a right licensed under the Creative Commons license.
- (i) No. *License violation – this is not a noncommercial use.*
 - (ii) Yes. Continue to Question B.

B. Nature of the use: Advertising

- (1) Is the NC-licensed content being used in an advertisement for third party products or services?
- (i) Yes. *License violation, this is not a noncommercial use.*
 - (ii) No. Continue to the next question.

¹ The IRS definition of 501(c)(3) organization is an organization whose charitable purpose falls into one of the following categories: (i) religious, *educational, charitable, scientific, literary*, testing for public safety, to foster national or international amateur sports competition, or prevention of cruelty to children or animals organizations; (ii) and, whose operations are restricted in the following ways: (a) dedicate assets to charitable purposes; (b) service public purposes; (c) participate insubstantially in social activities; (d) participate insubstantially in legislative activity; (e) do not engage in political activity (e.g. do not accept contributions or make expenditures for the purpose of influencing or attempting to influence the selection, nomination, election or appointment of an individual to a federal, state or local public office or office in a political organization.) *Note* that we may have to limit the definition of “nonprofit” to only nonprofits that have a educational, charitable, scientific, literary (ie. not religious) purpose.

- (2) Is viewing of an advertisement for third party products or services required as a condition of accessing or viewing the NC-licensed content (eg. “click-through” advertising)?
- (i) Yes – *license violation; this is not a noncommercial use.*
 - (ii) No. Continue to the next question.
- (3) Is the NC-licensed work being used in connection with advertisements for third party products or services where the NC-licensed work is the primary draw or a is substantial amount, both qualitatively and quantitatively?
- (i) Yes - *license violation; this is not a noncommercial use.*
 - (ii) No. Continue to the next question.

C. Conditions on Use: For Services Provided

- (1) Is money changing hands in exchange for a service provided in connection with the NC-licensed work?
- (i) No. Continue to Question D
 - (ii) Yes, continue to the next question.
- (2) Is money changing hands for a service being provided to (in the case of, for example, a for-profit copy shop) or by an allowable NC user incidental to the use of the NC-licensed work (e.g. course packs provided by an educational institutions)?
- (i) Yes - this is a noncommercial use.
 - (ii) No, continue to Question D.

D. Conditions on Use: Original work

- (1) Is there any money changing hands in connection with the use of the NC licensed work?

Money may change hands in connection with the use of an NC-licensed work in at least four ways:

- (a) As a condition of using the NC-licensed work, *license violation – this is not a noncommercial use.*
- (b) As a condition of using another work that includes an NC-licensed work, where the NC-licensed work is either the primary draw or a substantial amount, whether qualitatively or quantitatively, *license violation – this is not a noncommercial use.*

- (c) As a condition of using another work that includes a verbatim NC-licensed work, where the NC-licensed work is not the primary draw or is an insubstantial amount, both qualitatively and quantitatively - this is a noncommercial use provided that there is no charge associated with directly accessing the work.
- (d) As an optional contribution (e.g. a tip jar, donations, membership drive) for an individual, an educational institution or nonprofit organization that uses the verbatim NC-licensed work or another work that includes a verbatim NC-licensed work – this is a noncommercial use.

E. Conditions on Use: Derivative Works

- (1) Is the money changing hands in connection with a derivative use of an NC licensed work?
 - (a) If the derivative work based on an NC-licensed work is subject to a “ShareAlike” license condition, then the permitted uses of the derivative work should be assessed in accordance with D.
 - (b) For derivative works based on NC licensed work that are not subject to a “ShareAlike” license condition, money may change hands in at least one of three ways:
 - (i) As a condition of using a derivative work based on an NC-licensed work, of which the original NC-licensed work is the primary draw or a substantial amount, either qualitatively or quantitatively, of that derivative work, *license violation – this is not a noncommercial use.*
 - (ii) As a condition of using a derivative work based on an NC-licensed work, of which the original NC-licensed work is not the primary draw or is an insubstantial amount, both qualitatively and quantitatively, of that derivative work – this is a noncommercial use.
 - (iii) As an optional contribution (e.g. a tip jar, donations, membership drive) for an individual, an educational institution or nonprofit organization that uses the derivative work based on the NC-licensed work – this is a noncommercial use.