

OPEN LICENSING, HIDDEN COSTS: SURVEY EXPERIMENT INSIGHTS ON CREATIVE COMMONS AND COPYRIGHT INFRINGEMENT

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Since its inception, Creative Commons has introduced new ways for creators to grant licenses to the public without cost or the need for negotiation by breaking up rights provided by copyright and making a subset of those rights (as well as several rights and obligation beyond the scope of copyright itself) available to anyone willing to abide by the conditions of the license. Its widespread adoption has democratized open licensing for creators beyond the software context these licenses originated within. Although the success of Creative Commons as a community is plain, relatively little information is available about its perception with the general public. Aggressive litigation by Creative Commons licensors has put the organization in a peculiar position: publicly clarifying that they would prefer licensors not enforce their rights when licenses are breached.

This stance raises questions about whether members of the public believe Creative Commons licensors are less likely to enforce their copyright. This Article presents insights from a novel, nationally representative survey experiment of over 1,200 participants applied to theoretical debates and prior cases dealing with the licenses. The survey evaluates the public's recognition of Creative Commons before dividing participants into three groups: a control group with a standard copyright notice, a treatment with an abbreviated Creative Commons license marking, and a treatment with a short primer on Creative Commons and a full text license caption. These three groups are presented with seven short scenarios presenting re-use in different contexts and asked about the likelihood of legal action, their estimate of the legal consequences under the current law, and their evaluation of what the consequence should be.

Survey results suggest about 7% of the U.S. adult population accurately recognizes the Creative Commons logo and about 25% have some knowledge of the organization. Using full-text license terms and a short primer on Creative Commons increased respondent estimates of the severity of legal consequences under current law as well as their estimate of preferred legal consequences for infringement. In sum, results suggest licensors who want the terms of their license respected should prioritize the use of full-text license descriptions that provide more information about the license terms and provide any opportunities available for potential licensees to understand Creative Commons.

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