Work programme 2005 –2007

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INTRODUCTION

Copyright law enables authors of creative works to influence the use and distribution of their work and to participate in the exploitation of it. The boom in digital media and the Internet has given copyright a new meaning. Today, the relationship between authors, producers, distributors, and consumers has changed a lot. It is increasingly governed by contractual relations. More than ever before, authors are taking control over the distribution of their work, by means of their own web sites. Many users – who are often authors themselves – find the author’s exclusive rights to be restrictive, while the enforcement of copyright law in a digital environment can cause practical problems.

In 2004, Creative Commons Nederland (CC-NL) was established -- a revolutionary licensing system that enables the distribution of copyrighted work as broadly as possible (and often on the Internet) without violating the authors’ rights. These licences make the application of copyright in the digital domain simpler and more transparent.

In this work programme, CC-NL’s initiators outline the future plans of the organisation. In short paragraphs, they define copyright, the how and why of CC-NL, as well as the organisation’s ambitions for the next two years. CC-NL is a collaboration between Stichting Nederland Kennisland (KL), the Waag Society (WS), and the Instituut voor Informatierecht of the University of Amsterdam (IViR).

1.1 Copyright and the individual

Copyright law was implemented at the beginning of the 20th century for a media market that consisted of a small and well-organised group of authors, producers, and distributors. In the digital age, however, the role of such individual distributors is fading, while a spectrum of authors, performing artists, and producers of books, films, computer programs, animations, and music has appeared on the scene. These authors, increasingly, want to manage their rights themselves and they often end up distributing their work themselves. In contrast with the ‘pre-digital’ age, users’ rights and authorisation are for the most part laid down contractually. Yet with digitalisation have come large enforcement problems. More than ever before, copyright holders note the violation of their rights, while users are frequently unsure about the status of works which are easily accessible to them via the Internet. While Dutch law - the Copyright Act 1912, the Neighbouring Rights Act, and the Database Act - does provide protection, the legal structure is sometimes unable to deal with the practical problems that may occur. Among the problematic areas are the following:

1. Many works and other subject matter are made widely available via the author’s or performer’s own web sites, and other electronic media, without clear indication to potential users whether or to what extent (freely) they can use it. This lack of transparency impedes the exploitation of rights in the digital domain.

2. Individual authors who want to exploit their work through intermediaries must use specialised agents such as publishers, broadcasting organisations, film producers etc. As a result of increasing media concentration, these authors find themselves in a structurally weaker bargaining position that frequently leads to one-sided standard-exploitation contracts which fail to represent their interests fully.

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1 Copyright is the exclusive right of the author of a literary, scientific or artistic work or his successors in title to communicate that work to the public and to reproduce it, subject to the limitations laid down by law. (Article 1, Copyright Act 1912)
3. Unless a copyright limitation applies, cultural-heritage institutions that want to make works in their collections and archives publicly accessible must ask permission from the copyright holders. Presently, the legal limitations on copyright do not mesh well with the requirements of the digital public domain. A further problem is that copyright holders of ‘orphan’ works are often very hard to trace.

4. Increasingly, exploiters of protected works are using digital rights management systems to control and technically protect their rights. This can impede public accessibility to cultural works.

It is clear that individual authors who wish to manage their own rights and distribute their work, should have the necessary contractual and technical knowledge at their disposal. However, for most individual authors, artists, social organisations as well as all sorts of public-collection keepers and content producers the costs for this are prohibitively high. This results, in many cases, in creative achievements often not being publicly accessible.

In a letter to the Lower House in October 2004, the Minister of Justice, Piet-Hein Donner, explained the government’s copyright policy. He welcomed the Creative Commons initiative. The Minister wrote in his letter that access to information is key:

“In this challenging field, we should not just look on expanding copyright law as the sole solution, as we would risk losing legitimacy. On the one hand, copyright law must continue to protect copyright holders and investments. On the other hand, it should not unnecessarily impede innovation, or the layout and exploitation of network infrastructures. We should also be aware that the development of technical protection measures may prevent information from being accessible, for example because access is only possible at a very high price. If this situation were to occur, and self-regulation offered no solution, then I would consider it necessary to change the law. The new article 29a (4) of the Copyright Act 1912 enables this (compare also article 19 (3) and article 5a (3) Database Act). Against this background, I welcome initiatives like Creative Commons that stimulate the distribution of copyrighted works via the Internet, based on a system of standard licenses without infringing copyright. (see www.creativecommons.nl).”

1.2 Economic importance of Creative Commons

Copyright law can be discussed against a background of topical debate on the ‘economisation’ of culture and the role the creative industry plays as a growth sector in the Dutch knowledge economy.

The creative industry is increasingly viewed as a potential growth sector. The design sector alone has an estimated worth of €2.6 million per year which is equal to the airline or insurance sectors. Some three percent of the national labour force works in the creative industry. Included in this group are filmmakers, musicians, writers and journalists, as well as publishers, owners of amusement parks, broadcasting organisations, and advertising companies. The Netherlands has gained international renown in the creative sector and particularly so in new media. Those involved are focused on innovative content development and designing innovative ICT-solutions to circulate content. This sector shows signs of real growth potential.

In an economy in which the user has increasing influence on product and service development, it is important to develop innovative instruments which users can use to exert their influence. This is particularly so with the design of the virtual public domain: in the area of e-culture, through the development of open source software, and Creative Commons. These elements determine the innovative force of the public domain by allowing individuals and groups to

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4 Donner’s letter (October 13 2004) to the Lower House.
5 The task force defines the creative industry as (spacious) clusters of creative companies with activities that characterise themselves as “those activities which have their origin in individual creativity, skill, and talent and which have a potential for wealth and job creation through the generation and exploitation of intellectual property.” Department Culture, Media and Sport. http://www.culture.gov.uk, such as found in: Den Blanken, M., & Koops, O., 2004, Creativiteit en Innovatie in de lokale economie, TNO STB & TNO Inro.
establish new connections and operate in networks. These are aspects where legal, technological, and cultural policy coincide.

Creative Commons is a generic instrument inspired by the public domain. Its licences, which are free of charge to all, help to standardise exploitation and users’ contracts, increase transparency, create greater legal certainty, and minimise transaction costs. They increase the economic efficiency of exploitation and distribution of copyrighted work. This is of great importance within a creative industry where private productions and so-called grassroots creative projects are increasingly important.

Creative Commons ensures contractual clarity in the creative industry. The project not only allows authors and composers to make their works available without the involvement of the big record labels, or writers to distribute their own books, but it can also be used by broadcasting companies or archives to make existing material widely available. Broad acceptance and incorporation of the Creative Commons-licence is essential to enable the growth of the creative industry in the Netherlands. By using the licences, transparent transaction terms are created and easy access to source material for new works and products is enabled.

Finally, a strong Dutch imprint on Creative Commons in Europe will maintain the Netherlands’ “guiding country” image in the fields of Internet and new media.
2 Creative Commons Nederland

Creative Commons Nederland (CC-NL) is a collaboration that targets the development, introduction, and promotion of Creative Commons licences. These licences enable authors to distribute their copyrighted work free of charge for certain forms of reuse without sacrificing the protection that copyright grants them. A selection of standard licences have been developed which are free and accessible via the Internet to the public.

CC-NL forms part of the international iCommons-initiative. The international project aims to make available as many licences within as many national legal systems as possible. Licences are currently available *inter alia* in: Austria, Brazil, Finland, Germany, Japan, the Netherlands, Spain, Taiwan, the UK, and the USA, and licences for at least another twenty countries are currently being translated. In doing so, iCommons is creating a large international depot of works that are available under CC conditions.

2.1 The licences

In June 2004, the 1.0 versions of the CC-NL licences were published (upgraded in March 2005 to 2.0 versions). There are six options:

1. Attribution
2. Attribution - NoDerivatives
3. Attribution - NonCommercial - NoDerivatives
4. Attribution - NonCommercial
5. Attribution - NonCommercial - ShareAlike
6. Attribution - ShareAlike

The licences which have been adapted to Dutch copyright law, are used by a large number of authors. Authors can find information about the licence system on the CC-NL web site. Also available on the web site are numerous tools including a search engine and publisher that enable authors to publish their works on the Internet or find material released under CC-licence. Today, 60,000 such CC-NL licences are in operation. It is not yet clear how, by whom, for what, and why the licences are being used and whether they relate to photographs, music, books, or film.

2.2 Ambition

With the introduction of CC-NL licences, a first step has been made to democratise individual exploitation of rights and to enable in an innovative and practical way the exercise of copyright in the digital age. CC-NL has stated three ambitions regarding the relationship between citizens, law, and technology in the coming years.

1. Open culture

CC-NL starts from an 'open content' model and aims to promote the distribution of and access to cultural works. Creative Commons is an innovative, contractual instrument that adds to the existing, legal instruments, and is an alternative to (frequently one-sided) exploitation contracts set up by intermediaries, and caters to the needs of the information and knowledge society. The self-regulatory character of CC-licences reduces the pressure which, due to the enforcement of copyrights, threatens to overwhelm the judicial system. CC-NL aims to promote the use of CC-licences as widely as possible, to research a number of relevant legal issues in connection to
their application and use, and to begin intensive collaboration with the relevant organisations on a national and international level.

2. **iCommons**

Internationally, Creative Commons has set a unique standard. Initially of American origin, the licence model has been rewritten to fit with national law in a large number of countries including the Netherlands. Without direct governmental involvement, an international process of contractual self-regulation and standardisation has evolved. At European level, this means the licences will shortly be available in almost all EU-member states.  

6 This shows that internationalisation is not just top-down, but also bottom-up. In October 2005, the European Commission adopted a Recommendation on collective cross-border management of copyright and related rights for legitimate online music services, which may contribute to the establishment of a European CC-strategy.  

7 The recommendation puts forward measures for improving the EU-wide licensing of copyright for online services. Improvements were deemed necessary because new Internet-based services such as webcasting or on on-demand music downloads need a licence that covers their activities throughout the EU. The absence of EU-wide copyright licences was one factor that made it difficult for new Internet-based music services to develop their full potential. This Recommendation is meant to foster effective structures for cross-border management of rights to ensure that collective rights managers achieve a higher level of rationalisation and transparency, with regard to compliance with competition rules, especially in the light of the requirements arising out of the digital environment.

The first European gathering of Creative Commons representatives was organised by Creative Commons Nederland in Amsterdam in March 2005. The meeting was mainly set up to investigate potential collaboration between parties. A mutual strategy vis-à-vis collective rights management societies was also discussed. A first initiative was launched to set up a European research program regarding effective use of the licences in Europe. However, the most important outcome of the gathering lay in another area. The national project leaders and Creative Commons representatives from the US formulated guidelines for collaboration between different national Creative Commons projects and those in the US. These guidelines should guarantee that projects in Europe (and elsewhere in the world) have authority to influence the future Creative Commons movement strategy. This guarantees that future licences better connect to the demands of European (and, therefore, also Dutch) users.

During the meeting it became clear that, on a European level, the Netherlands is one of the best organised Creative Commons projects. This has allowed us to give special impetus to European collaboration between CC-projects. Creative Commons Nederland would like to continue to contribute in this capacity in the future.

3. **Publicly financed content**

On September 30 2004, the chairman of the High Level Conference on the Future of ICT Policies concluded that one of the main points for future ICT-policy must be that publicly financed content be made more accessible. Copyright law plays an important role in this respect. Productions that produced on commission by public broadcasting companies are rarely available online and are, above all, frequently subject to the same copyright restrictions as commercial content. The same problem occurs in relation to public education and elsewhere in the cultural sector, making parts of cultural-heritage hardly or not at all publicly accessible. One particular complication is that ‘clearing’ of the necessary rights causes large logistical problems.

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6 Since March 2005, localised versions of the licences have been made available in Austria, Belgium, Finland, France, Germany, Hungary, Ireland, Italy, Slovenia, Spain, Sweden, the Netherlands, and the UK.


The Creative Commons licences are specially designed to enable the re-use of copyrighted works transparently and at low cost. CC-NL aims to stimulate and investigate the application of CC-licenses, especially CC-licences for content that is publicly financed.\footnote{See letter from the Minister of Justice to the Lower House Tweede Kamer 2004-2005, 29838, nr. 1.}
3 Activities

Now that the introduction of the licences in the Netherlands has been completed, Creative Commons Nederland activities are focused on three areas:

1. Information for and support for the use of the Creative Commons-licences in the Netherlands.
2. Research into the application of licences in specific sectors and existing obstacles in the use of licences.
3. Knowledge exchange and co-ordination of activities on a European level.

3.1 Information and support for the use of CC-licences in the Netherlands

Information on developments in Creative Commons’ field, including relevant progress in the wider copyright terrain, is accessible to the Dutch public via www.creativecommons.nl. In the coming period, we intend to set up a mailing list which Dutch licence users can use to exchange information about licence use and other related matters. In addition, a monthly newsletter will be circulated to interested parties.

3.1.1 Community Building

Via the Creative Commons web site, different forms of information material will be made available. The web site will also be a forum, enabling contact with those behind the organisation. It will contain information products (presentations, mini-workshops, etc) so that businesses can involve Creative Commons in their own activities. The aim is to grow a community around the website and mailing list, in addition to activities described in the work program, and give support and advice to individual users. Material is being developed and publications written about this.

Community meetings will be organised regularly (twice yearly) to discuss new developments, motivate community members, and receive feedback from users. The aim is to attribute more tasks to the community (like management of the website, and other tools) and find ways to make activities long-term (e.g. via a donation system).

In addition to establishing and co-ordinating this community, Creative Commons Nederland will guarantee the continuation of CC-Licences. This will include the updating of licences, translation of new licence types (like sampling licences), and updating of supporting material, as well as supplying information about the Netherlands’ situation to Creative Commons board members.

Since June 2004, CC-NL has provided information about Creative Commons through various means ranging from discussions with BUMA, Omroep.nl, VPRO Digitaal, NCRV, and OSOSS to giving presentations and workshops at SURF, OSOSS, Kennisnet, Noorderslag, Collectief Nachtwacht Amsterdam, Cultureel Den Haag, the Nederlands Instituut voor Media Kunst and the Hogeschool van Amsterdam. These activities will continue during the 2005-2007 period.

In addition to these tailor-made activities, a marketing campaign aimed at the broader public has been set up to boost Creative Commons’ name and stimulate its visibility. This will include the writing and publication of articles, as well as the organisation of events, like the launch of a CD with music licensed by Creative Commons, or an event presenting CC-licensed works.

3.1.2 Specific information and support

While individual authors can find necessary support about the use of Creative Commons licences on the CC-web site and via the community, there is a number of areas in which well focused strategies are essential to give support and stimulate use by (institutional) users. For
the following groups, CC-NL intends to establish workshops, support pilot-projects, and work together. These activities fit in with those defined in the following chapter.

- Individual authors in the music sector
- Students of media/cultural related education
- Educational institutes and universities
- Cultural heritage institutes and other archive managers
- Government institutions

3.1.2.1 Individual artists in the music sector

The advent of cheap, digital distribution and production techniques has radically changed the music sector's structure. Using the Internet, many musicians are now able to distribute their works all over the world independently of commercial producers and publishers. This explains the growing interest for use of Creative Commons licences in this sector. Until now standard contracts offered by collective rights management societies and publishers (or record labels) have not provided authors with sufficient freedom. Creative Commons aims to help authors and artists make their work available through Creative Commons should they so wish, without undermining the collective rights management system. Discussions will be held, to this end, with the rights organisations and other relevant parties. At the same time, CC-NL (and other partners from the iCommons-network) will also try to focus attention on these types of problems at European level.

3.1.2.2 Students of media/culture related education

Students of media and culture related education are an important CC-NL target group. CC-NL wants to attract attention to the Creative Commons-licence model in places where people are educated to become a professional in managing, producing, archiving or distributing copyrighted material. The aim is to broaden the awareness of alternative forms of exercise of copyright. CC-NL and several educational institutes will, therefore, develop a teaching module on Creative Commons and copyright law, which it will test and evaluate in two pilot-projects. Parallel to this, regular seminars and lectures will be given.

3.1.2.3 Educational institutions and universities

Attention will also be given to the application of the Creative Commons-licences within educational institutions and universities. This will initially involve the re-use of self-managed and produced teaching material from other educational institutions. M.I.T.'s successful open courseware project proves that an open content-model in this sector can be effective.

In collaboration with educational institutions, CC-NL will look into the application of CC-licences in the Dutch education sector and establish a number of pilot-projects. These will specifically aim at combining the licences with assignments, academic papers and self-produced teaching material.

A second point of attention concerns the development of specific contractual CC-models for the publication of research conducted by universities. Focal points of research are the contractual relationship between researchers and publishers, the labour contracts between staff and their employers and existing and future initiatives regarding open content in education and research. Interestingly, the renowned Max Planck Institute (a publicly funded German research institution) now actively encourages the use of Creative Commons-licences. We refer to the Science Commons-project (science.creativecommons.org) connected with Creative Commons. Especially in this last area, our public information activities will be closely connected to the research activities described in paragraph 3.2.1.3.

3.1.2.4 Cultural-heritage institutions and other archive administrators
In the area of cultural-heritage we find the problem of underlying copyrights and the sometimes ‘untraceable’ authors. Organisations cannot license their material via Creative Commons without approval, yet some organisations do want to open their archives for re-use. Working with managers of collections, CC-NL tries to develop strategies to make existing archives as available as possible.

At the same time CC-NL, in collaboration with museums, broadcasters, archives, and managers, wants to develop strategies to ensure – where possible and needed – that new acquisitions and productions are made available under Creative Commons-licences. In this respect, the experience of the BBC with their Creative Commons license system serves as an interesting example.

Thirdly, we will study possibilities to stimulate the use of open-content models with producers (new media and broadcasters) by requesting that public funds add the use of open-content models as a criterion for making subsidies for production available.

In each of these areas, investigation (via meetings of experts and workshops) will take place and in concert with relevant parties pilot-action lines will be set up.

### 3.1.2.5 Government Institutions

An area in which the Creative Commons-model – imported from the U.S. – is not suitable, is the use of CC-licences by government bodies. In the United States, government information is not protected by (federal) copyright law. In the Netherlands, however, copyright law does protect government works. The possibilities for applying Creative Commons to government information is an area of future research (see below). If research shows that there is a real need for one or more CC-licences specifically for (para-) governmental use, then CC-NL together with national and European partners will develop and implement them in cooperation with Creative Commons International, and promote their use.

If research shows that there is no need for such specialised licences, Creative Commons Nederland still strives to promote the use of existing licences within (para-) governmental institutions.

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10 An example is the ICTU and OSSOS programme.
3.2 Research into the application of the licences into specific sectors and into existing obstacles in the use of licences.

To enable further development of Creative Commons Nederland in the future it is necessary to conduct research into the application of licences to specific sectors and existing legal obstacles. Concrete research activities for Creative Commons Nederland will be set up in two different areas: 1) scientific legal research and 2) user surveys.

3.2.1 Legal research

Scientific research into legal aspects and bottlenecks with regard to the application of CC-licences at international level has just started. The research will concentrate on the four research questions formulated below. This does not mean that other questions will not be researched.\textsuperscript{11}

3.2.1.1 Collective rights management

There is great interest, particularly in the music sector, in using the Creative Commons-licences. However, this can conflict with the contracts which collective rights management societies normally use. Authors transfer the rights on their existing and future work to the collective rights management societies. This allows rights organisations to exploit these rights, while the authors lose their say, making them unable to offer their work under a CC-licence. Comparable situations arise in the relationship between authors and record labels. The way authors and artists can distribute (some of) their works under a Creative Commons-licence without undermining the collective rights management system should be researched.

3.2.1.2 Cultural-heritage institutions and other archive administrators

Cultural-heritage organisations that want to make their collections publicly accessible must ask the copyright holders for permission, unless a limitation on copyright is applicable. However, these limitations on copyright offer little room for such forms of re-use, while the copyright holders of ‘old’ works are extremely difficult to trace. CC-NL will research how broadcasters, archives, or museums can license their collections via Creative Commons within the legal limits. Future ways in which the CC-model can help to solve the problem of missing copyright holders (orphan works) needs to be studied.

A complication is that many cultural-heritage institutions are part copyright holders as well as (re)users of works in their collections. Research must be conducted into other possible legal obstacles impeding the use of Creative Commons-licences in this sector.

3.2.1.3 Research content

As mentioned earlier, there is a range of promising applications of Creative Commons-licences or other open content-models, in the field of science and research. The roles the universities themselves can play should be studied. On the one hand universities, as employers of researchers, lay claim to their own copyrights. At the same time, the universities are large-scale users of scientific works, and therefore have a direct interest in the broad application of open content-models.

It is worth mentioning that for some years the Surf Foundation (a group of universities working together) has been talking with representatives of (international) publishers and other interested

\textsuperscript{11} A question that came up in the Netherlands (with its strong tradition of droit d'auteur), concerns the quality and the duration of the (possibly perpetual) CC-licence. Can one give his rights away? How does the licence compare to the moral rights of the author (which one can never really give away)? Is an author able to change his mind after he made his work accessible under a CC-licence?
parties (the so-called Zwolle-group) about reaching a more equally balanced division of rights between scientific authors, universities, and publishers.

3.2.1.4 Government

Unlike in the U.S., the works produced by the Netherlands government are protected by copyright law. Connected to this, a number of legal and practical questions arise which need to be answered. How does a possible application of CC-licences on government information relate to article 15b of the Copyright Act 1912 (in particular) and the Dutch Freedom of Information Act? Article 15b Copyright Act 1912 tells us that free publication of government information is allowed, unless this right is expressly reserved by law, ruling, publication, or other condition. Is a CC-licence such a condition? The European directive 2003/98/EC concerning the reuse of government information (not transposed yet) will also be part of this analysis.

3.2.2 User survey

In addition to legal research, user surveys are required. There are presently some 29,000 CC-NL-licences (May 2005) connected to works. Within this work programme resources have been earmarked to analyse (by means of qualitative and quantitative research) how, by whom, for whom, and why the licences have been used. Which licence has been used and whether it concerns photographs, music, books, or film. Research results will enable Creative Commons to improve its information support activities and react to users’ needs.

3.3 International collaboration

Creative Commons Nederland will have regular contact with members from different countries regarding iCommons. Experiences of working with the licences will be exchanged. CC-NL made a first important step in achieving this during the recent Creative Capital Conference in Amsterdam. Upon CC-NL’s invitation, Creative Commons representatives from more than 20 countries exchanged experiences and discussed the bundling of activities within European context. Case studies from the broadcasting sector such as the BBC Creative Archive were discussed. Plans for organising a gathering in Harvard of iCommons project leaders on June 23 and 24, 2005 were also discussed.

Creative Commons Nederland is excellently positioned to fulfil a European role in the future and to shape development of the licensing model further. To this end, we will organise a yearly workshop for participants from different European countries. The content of the workshops may vary from research in legal affairs to organisational topics. A first workshop in autumn 2005 will attempt to form a collective strategy for contact with collective rights management societies in the music sector.

In addition to activities described in the work programme, CC-NL also wants to participate in a possible European Creative Commons-research programme. This participation will expand and complement activities described in the work programme, and offer a perspective for continuing some of the activities mentioned beyond the specified dates. Combined with a strong community around the licences, these activities should make Creative Commons Nederland viable for the mid to long term.
4 Organisation

Creative Commons Nederland is a joint initiative of Stichting Nederland Kennisland, Waag Society and the Instituut voor Informatierecht.

Kennisland and the Waag Society carry out CC-NL licences public project lead role within the international iCommons network. Creative Commons Nederland’s administration will be headquartered at Kennisland.

IViR fulfils the legal project lead role for Creative Commons Nederland and is responsible for the translation and adaptation of American licences to Dutch law as well as legal research regarding application of CC-NL licences.

Creative Commons Nederland is part of the iCommons-project. The project aims to make Creative Commons-licences suitable for use in as many national legal systems as possible.

Given the cultural, educational, economic, and legal aspects, financial support to CC-NL has been given by the ministries of Education, Culture and Science, and of Economic Affairs, and the Nationaal Actieplatform Elektronische Snelwegen for the period 2005 -2007.