The Use and Limitations of Open Education Resources according to Law

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Manila Hotel
Copyright and licensing
Copyrighted works

Section 172. Literary and Artistic Works. – 172.1. Literary and artistic works, hereinafter referred to as "works", are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:

a. Books, pamphlets, articles and other writings;
b. Periodicals and newspapers;
c. Lectures, sermons, addresses, dissertations prepared for oral delivery whether or not reduced in writing or other material form;
d. Letters;
e. Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;
f. Musical compositions, with or without words;
g. Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;
h. Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;
i. Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;
j. Drawings or plastic works of a scientific or technical character;
k. Photographic works including works produced by a process analogous to photography; lantern slides;
l. Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;
m. Pictorial illustrations and advertisements;
n. Computer programs; and
o. Other literary, scholarly, scientific and artistic works.

172.2. Works are protected by the sole fact of their creation, irrespective of their mode or form of expression, as well as of their content, quality and purpose.
Copyrighted works

Section 173. Derivative Works. – 173.1. The following derivative works shall also be protected by copyright:

a. Dramatizations, translations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works; and

b. Collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents.

173.2. The works referred to in paragraphs (a) and (b) of Subsection 173.1 shall be protected as new works: Provided however, That such new work shall not affect the force of any subsisting copyright upon the original works employed or any part thereof, or be construed to imply any right to such use of the original works, or to secure or extend copyright in such original works.

Subject Matters NOT copyrighted

Section 175. Unprotected Subject Matter. – Notwithstanding the provisions of Sections 172 and 173, no protection shall extend, under this law, to any idea, procedure, system, method or operation, concept, principle, discovery or mere data as such, even if they are expressed, explained, illustrated or embodied in a work; news of the day and other miscellaneous facts having the character of mere items of press information; or any official text of a legislative, administrative or legal nature, as well as any official translation thereof.

Works of public domain include both Works of the Government (See Section 176, next slide) and previously copyrighted works which protection have expired or lapsed (See Section 213).
Works of the Government

Section 176. Works of the Government. –

176.1. No copyright shall subsist in any work of the Government of the Philippines. However, prior approval of the government agency or office wherein the work is created shall be necessary for exploitation of such work for profit. Such agency or office may, among other things, impose as a condition the payment of royalties. No prior approval or conditions shall be required for the use for any purpose of statutes, rules and regulations, and speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and in meetings of public character.

176.2. The author of speeches, lectures, sermons, addresses, and dissertations mentioned in the preceding paragraphs shall have the exclusive right of making a collection of his works.

176.3. Notwithstanding the foregoing provisions, the Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest or otherwise; nor shall publication or republication by the Government in a public document of any work in which copyright is subsisting be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such work without the consent of the copyright owner.
Rights of a Copyright owner

Section 177. Copyright or Economic Rights. - Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

177.1. Reproduction of the work or substantial portion of the work;

177.2. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;

177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

177.4. Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental;

177.5. Public display of the original or a copy of the work;

177.6. Public performance of the work; and

177.7. Other communication to the public of the work.

Note that moral rights, which are rights of the author, are provided under Section 193 in relation to Section 195 of the law. The term of protection under RA 8293 has been amended by RA 10372 as follows

Section 198. Term of Moral Rights. – 198.1. the right of an author under Section 193.1. shall last during the lifetime of the author and in perpetuity after his death while the rights under Sections 193.2. 193.3. and 193.4. shall be coterminous with the economic rights, the moral rights shall not be assignable or subject to license. the person or persons to be charged with the posthumous enforcement of these rights shall be named in a written instrument which shall be filed with the National Library. In default of such person or persons, such enforcement shall devolve upon either the author’s heirs, and in default of the heirs, the Director of the National Library.
As to 177.1

171.9.* "Reproduction" is the making of one (1) or more copies, temporary or permanent, in whole or in part, of a work or a sound recording in any manner or form without prejudice to the provisions of Section 185 of this Act.

As to 177.4

171.5. "Public lending" is the transfer of possession of the original or a copy of a work or sound recording for a limited period, for non-profit purposes, by an institution, the services of which are available to the public, such as public library or archive;

171.8. "Rental" is the transfer of the possession of the original or a copy of a work or a sound recording for a limited period of time, for profit-making purposes;

As to 177.6

171.6. "Public performance," in the case of a work other than an audiovisual work, is the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process; in the case of an audiovisual work, the showing of its images in sequence and the making of the sounds accompanying it audible; and, in the case of a sound recording, making the recorded sounds audible at a place or at places where persons outside the normal circle of a family and that family's closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and at the same time, or at different places and/or at different times, and where the performance can be perceived without the need for communication within the meaning of Subsection 171.3;

As to 177.7

171.3.* "Communication to the public" or "communicate to the public" means any communication to the public, including broadcasting, rebroadcasting, retransmitting by cable, broadcasting and retransmitting by satellite, and includes the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them;
Section 184. Limitations on Copyright. - 184.1. Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

(a) The recitation or performance of a work, once it has been lawfully made accessible to the public, if done privately and free of charge or if made strictly for a charitable or religious institution or society;

(b) The making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: Provided, That the source and the name of the author, if appearing on the work, are mentioned;

(c) The reproduction or communication to the public by mass media of articles on current political, social, economic, scientific or religious topic, lectures, addresses and other works of the same nature, which are delivered in public if such use is for information purposes and has not been expressly reserved: Provided, That the source is clearly indicated;

(d) The reproduction and communication to the public of literary, scientific or artistic works as part of reports of current events by means of photography, cinematography or broadcasting to the extent necessary for the purpose;

(e) The inclusion of a work in a publication, broadcast, or other communication to the public, sound recording or film, if such inclusion is made by way of illustration for teaching purposes and is compatible with fair use: Provided, That the source and of the name of the author, if appearing in the work, are mentioned;

(f) The recording made in schools, universities, or educational institutions of a work included in a broadcast for the use of such schools, universities or educational institutions: Provided, That such recording must be deleted within a reasonable period after they were first broadcast: Provided, further, That such recording may not be made from audiovisual works which are part of the general cinema repertoire of feature films except for brief excerpts of the work;
Allowances by law in the use of the work Without permission of the Copyright owner

(g) The making of ephemeral recordings by a broadcasting organization by means of its own facilities and for use in its own broadcast;

(h) The use made of a work by or under the direction or control of the Government, by the National Library or by educational, scientific or professional institutions where such use is in the public interest and is compatible with fair use;

(i) The public performance or the communication to the public of a work, in a place where no admission fee is charged in respect of such public performance or communication, by a club or institution for charitable or educational purpose only, whose aim is not profit making, subject to such other limitations as may be provided in the Regulations;

(j) Public display of the original or a copy of the work not made by means of a film, slide, television image or otherwise on screen or by means of any other device or process: Provided, That either the work has been published, or, that the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title;

(k) Any use made of a work for the purpose of any judicial proceedings or for the giving of professional advice by a legal practitioner; and

(l) The reproduction or distribution of published articles or materials in a specialized format exclusively for the use of the blind, visually- and reading-impaired persons: Provided, That such copies and distribution shall be made on a nonprofit basis and shall indicate the copyright owner and the date of the original publication.

184.2. The provisions of this section shall be interpreted in such a way as to allow the work to be used in a manner which does not conflict with the normal exploitation of the work and does not unreasonably prejudice the right holder's legitimate interests.
Allowances by law
in the use of the work
Without permission of the Copyright owner

Section 185. Fair Use of a Copyrighted Work. – 185.1. the fair use of a copyrighted work for criticism, comment, news reporting, teaching including limited number of copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright. Decompilation, which is understood here to be the reproduction of the code and translation of the forms of a computer program to achieve the interoperability of an independently created computer program with other programs may also constitute fair use under the criteria established by this section, to the extent that such decompilation is done for the purpose of obtaining the information necessary to achieve such interoperability.

In determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include:

(a) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;

(b) The nature of the copyrighted work;

(c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(d) The effect of the use upon the potential market for or value of the copyrighted work.

185.2. The fact that a work is unpublished shall not by itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Section 186. Work of Architecture. - Copyright in a work of architecture shall include the right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognizably derived from the original: Provided, That the copyright in any such work shall not include the right to control the reconstruction or rehabilitation in the same style as the original of a building to which that copyright relates.
Allowances by law in the use of the work Without permission of the Copyright owner

Section 187. Reproduction of Published Work. - 187.1. Notwithstanding the provision of Section 177, and subject to the provisions of Subsection 187.2, the private reproduction of a published work in a single copy, where the reproduction is made by a natural person exclusively for research and private study, shall be permitted, without the authorization of the owner of copyright in the work.

187.2. The permission granted under Subsection 187.1 shall not extend to the reproduction of:

(a) A work of architecture in the form of building or other construction;

(b) An entire book, or a substantial part thereof, or of a musical work in graphic form by reprographic means;

(c) A compilation of data and other materials;

(d) A computer program except as provided in Section 189; and

(e) Any work in cases where reproduction would unreasonably conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author.
Allowances by law
in the use of the work
Without permission of the Copyright owner

Section 188. Reprographic Reproduction by Libraries. – 188.1. Notwithstanding the provisions of Subsection 177.1., any library or archive whose activities are not for profit may, without the authorization of the author or copyright owner, make a limited number of copies of the work, as may be necessary for such institutions to fulfill their mandate, by reprographic reproduction:

(a) Where the work by reason of its fragile character or rarity cannot be lent to user in its original form;

(b) Where the works are isolated articles contained in composite works or brief portions of other published works and the reproduction is necessary to supply them, when this is considered expedient, to persons requesting their loan for purposes of research or study instead of lending the volumes or booklets which contain them; and

(c) Where the making of such limited copies is in order to preserve and, if necessary in the event that it is lost, destroyed or rendered unusable, replace a copy, or to replace, in the permanent collection of another similar library or archive, a copy which has been lost, destroyed or rendered unusable and copies are not available with the publisher.

188.2. Notwithstanding the above provisions, it shall not be permissible to produce a volume of a work published in several volumes or to produce missing tomes or pages of magazines or similar works, unless the volume, tome or part is out of stock: Provided, That every library which, by law, is entitled to receive copies of a printed work, shall be entitled, when special reasons so require, to reproduce a copy of a published work which is considered necessary for the collection of the library but which is out of stock.
Allowances by law in the use of the work Without permission of the Copyright owner

Section 189. Reproduction of Computer Program. - 189.1. Notwithstanding the provisions of Section 177, the reproduction in one (1) back-up copy or adaptation of a computer program shall be permitted, without the authorization of the author of, or other owner of copyright in, a computer program, by the lawful owner of that computer program: Provided, That the copy or adaptation is necessary for:

(a) The use of the computer program in conjunction with a computer for the purpose, and to the extent, for which the computer program has been obtained; and

(b) Archival purposes, and, for the replacement of the lawfully owned copy of the computer program in the event that the lawfully obtained copy of the computer program is lost, destroyed or rendered unusable.

189.2. No copy or adaptation mentioned in this Section shall be used for any purpose other than the ones determined in this Section, and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

189.3. This provision shall be without prejudice to the application of Section 185 whenever appropriate.

Section 190. Importation and Exportation of Infringing Materials. – Subject to the approval of the Secretary of Finance, the Commissioner of Customs is hereby empowered to make rules and regulations for preventing the importation or exportation of infringing articles prohibited under Part IV of this Act and under relevant treaties and conventions to which the Philippines may be a party and for seizing and condemning and disposing of the same in case they are discovered after they have been imported or before they are exported.
Assignment or licensing

Section 180. Rights of Assignee or Licensee. – 180.1. the copyright may be assigned or licensed in whole or in part. Within the scope of the assignment or license, the assignee or licensee is entitled to all the rights and remedies which the assignor or licensor had with respect to the copyright.

180.2. The copyright is not deemed assigned or licensed inter vivos, in whole or in part, unless there is a written indication of such intention.

180.3. The submission of a literary, photographic or artistic work to a newspaper, magazine or periodical for publication shall constitute only a license to make a single publication unless a greater right is expressly granted. If two (2) or more persons jointly own a copyright or any part thereof, neither of the owners shall be entitled to grant licenses without the prior written consent of the other owner or owners.

180.4. Any exclusivity in the economic rights in a work may be exclusively licensed. Within the scope of the exclusive license, the licensee is entitled to all the rights and remedies which the licensor had with respect to the copyright.

180.5. the copyright owner has the right to regular statements of accounts from the assignee or the licensee with regard to assigned or licensed work.

Section 182. Filing of Assignment or License. – An assignment or exclusive license may be filed in duplicate with the National Library upon payment of the prescribed fee for registration in books and records kept for the purpose. Upon recording, a copy of the instrument shall be returned to the sender with a notation of the fact of record. Notice of the record shall be published in the IPO Gazette.
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Can licensee modify?

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Can licensee modify?

Is licensee required to share under same license?
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Considerations for LICENSORS

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Consider offering a warranty. If you are confident you have cleared all rights in the material, you may choose to warrant that the work does not violate the rights of any third parties. Specify additional permissions, if desired. You have the option of granting permissions above and beyond what the license allows; for example, allowing licensees to translate ND-licensed material. If so, consider using CC+ to indicate the additional permissions offered.

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licensing
From viewpoint of licensee

Which licensed works can I share?

You are free to: Share — copy and redistribute the material in any medium or format

Which licensed works can I share for commercial purposes?

You are free to: Share — copy and redistribute the material in any medium or format for any purpose, even commercially.

Which licensed works can I modify?

You are free to: Share — copy and redistribute the material in any medium or format

Adapt — remix, transform, and build upon the material
licensing

From viewpoint of licensee

Which licensed works can I combine, and what can be the allowable license of derivative work?
Which licensed works can I combine, and what can be the allowable license of derivative work?
Considerations for LICENSEES

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Considerations for LICENSEES

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Take note of the particular version of the license.
The current version (4.0) differs from prior versions in important respects. Similarly, the jurisdiction ports may differ in certain terms, such as dispute resolution and choice of law.

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Termination is automatic.
All CC licenses terminate automatically when you fail to comply with its terms. If the material is under a 4.0 license, you must fix the problem within 30 days of discovery if you want your rights automatically reinstated.

Consider licensor preferences.
Consider complying with non-binding requests by the licensor. The licensor may make special requests when you use the material. We recommend you do so when reasonable, but that is your option and not your obligation.
Public Licensing Standard on OER in the Philippines (CC BY-NC-SA)
Works that can be combined

Own content
### Licensing

**What are the scope of the terms of the licenses (as per elements)?**

<table>
<thead>
<tr>
<th>License</th>
<th>Requirements</th>
</tr>
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<tbody>
<tr>
<td><strong>Attribution</strong></td>
<td>You must give appropriate credit, provide a link to the license, and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.</td>
</tr>
<tr>
<td><strong>NonCommercial</strong></td>
<td>You may not use the material for commercial purposes.</td>
</tr>
<tr>
<td><strong>NoDerivatives</strong></td>
<td>If you remix, transform, or build upon the material, you may not distribute the modified material.</td>
</tr>
<tr>
<td><strong>ShareAlike</strong></td>
<td>If you remix, transform, or build upon the material, you must distribute your contributions under the same license as the original.</td>
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Content creation

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Third party licensed content

Institutionally-directed works

Quantity Diversity

Third party licensed content

Quality Accountability
Limited resources
Adoption issues

Controlled
Inclusion issues
Visual Illustrations on usage of CC licensed materials
Atty. Michael Vernon Guerrero was the Public Lead of Creative Commons in the Philippines from 2013 to 2018. He was responsible, while being the Deputy Project Lead for Creative Commons in the Philippines then, for the porting of the Creative Commons version 3.0 licenses for the Philippine jurisdiction in 2007.

He is also (1) a lawyer, engaged in private practice; (2) a law professor (teaching Political Law [Constitutional Law I, Constitutional Law II, Agrarian Reform Law and Social Legislations, Legal Technique and Logic, and Technology and the Law] at the Arellano University School of Law in Taft Avenue, Pasay City, Philippines, and (teaching Political Law Review) at the University of the East, Recto Avenue, City of Manila; and (3) the current Assistant editor for the Arellano Law Policy Review, a law journal for the Arellano Law Doundation.

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