

Edge Cases for Adaptation and Remix Permission: An Advanced Seminar for OER Practitioners

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Land acknowledgement

Before I begin, I need to say that while we are meeting in this virtual space from many locations all over the planet, I am myself physically located at this moment within the unceded territory of the Ute Peoples. The earliest documented people in this area also include the Apache, Arapaho, Comanche, and Cheyenne. An extended list of tribes with a legacy of occupation in this area can be found here: [Colorado Tribal Acknowledgement List](#).

Lots of folks want a deep dive into CC licenses

Some of them gravitate to the CC Certificate Course.

1

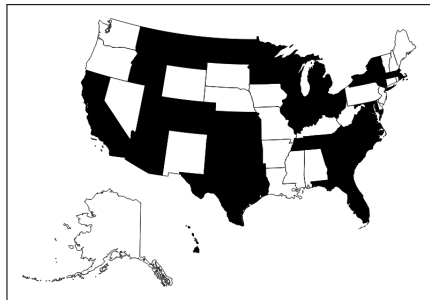
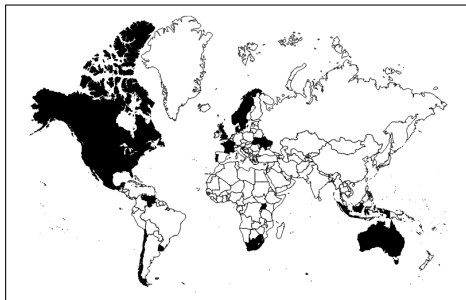


There are both Educator and Librarian sections [at this time].

¹ [Creative Commons Certificate webpage](#) by [Creative Commons](#), licensed under a [Creative Commons Attribution 4.0 International license](#), retrieved 18 October 2020

Cert course participants from six continents²

I've been facilitator for five Educator and two Librarian sections, with a total of 153 participants ... from all over the world².



The great majority of participants in both types of sections have been interested in adopting, adapting, and creating³ Open Educational Resources [OER], or helping others do so, in my experience.

²I count six continents having participants in my sections, but not everyone divides the Earth into continents the same way.

³ I'm trying to get people in the OER community to call this **AACing**.

Also many OER practitioners in my home state

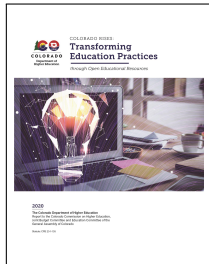
I live in Colorado, USA (a large, rectangular⁴ state in the “mountain west” of the US).



5

Colorado has had, since 2017, an *OER Council* housed in the state [Department of Higher Education](#), which

- organizes a conference,
- distributes grants (totaling around \$1.5 million so far) to public institutions of higher education [PIHEs] in the state for AACing OER, and
- has trained and supports a cohort of around 150 *Open Ambassadors* in those PIHE.



Another large group of OER AACers who often need to talk through complex licensing situations.

⁴ but not actually: in reality, it has 697 sides! it only looks rectangular from space.

⁵ [Colorado Rises: Transforming Educational Practices through Open Educational Resources, 2020](#), by the [Colorado Department of Higher Education](#), of unclear copyright status, maybe public domain; also, I assert this *use* is *fair*.

OER practitioners want to adapt and create

...that's kind of the point, isn't it?

[Well, price is important, particularly in the US with its \$1.764**Trillion** student debt. but adaptation and creation are strong motivators for faculty.]

If your adapting and creating OER, the main thing that makes this not an enormous, unimaginably huge task is building off of *openly licensed* prior work.

To the extent that the OER way in education is viable/sustainable, it depends fundamentally on adapting and remixing the work of others.

To misquote Isaac Newton⁶: *If we want to see more OER, it will be by standing on the shoulders of openly licensed giants.*

⁶ apparently he said "If I have seen further it is by standing on the shoulders of giants."

OER practice requires insight into licensing complexities

OER practitioners use a variety of licenses:

- some like the simplicity of CC BY;
- some want to force their work's future descendants to remain open by apply a license with the ShareAlike clause;
- some are still in the process of detoxing from the dominant neoliberal ideology and insist upon a license with the NonCommercial clause.

Practitioners also want to understand how their license choice constrains what future actors – including possibly bad actors – may do with their work or its derivatives.

Details about what licenses can be applied to adaptations of works under all CC licenses **matter**.

Details about what works under different CC licenses can be remixed together **matter**.

Some guidance from the Vatican of open licensing

The [Creative Commons website](#) has some wonderful resources to which I come back, over and over, and send CC Cert courses participants, and which I recommend to the OER AACers in Colorado and all over the world.

In particular, [the CC FAQ](#) answers the question “*Can I combine material under different Creative Commons licenses in my work?*,” helpfully beginning that answer with “It depends.”

Fortunately, the answer goes on to explain *how* it depends, including with two crucial charts⁷:

- **The License Compatibility Chart** and
- **The Adapter’s License Chart.**

⁷ Both charts are by [Creative Commons](#), can be found [on the CC FAQ here](#), and are released under a [CC BY 4.0 International license](#). I will in these slides repeatedly use and refer to the charts and nearby text (similarly licensed) in the CC FAQ, without repeating the attribution each time. There’s also probably a good *fair use* case for this use, in the US at least.

The License Compatibility Chart

	 PUBLIC DOMAIN	 PUBLIC DOMAIN	 CC BY	 CC BY SA	 CC BY NC	 CC BY ND	 CC BY NC SA	 CC BY NC ND
 PUBLIC DOMAIN	✓	✓	✓	✓	✓	✗	✓	✗
 PUBLIC DOMAIN	✓	✓	✓	✓	✓	✗	✓	✗
 CC BY	✓	✓	✓	✓	✓	✗	✓	✗
 CC BY SA	✓	✓	✓	✓	✗	✗	✗	✗
 CC BY NC	✓	✓	✓	✗	✓	✗	✓	✗
 CC BY ND	✗	✗	✗	✗	✗	✗	✗	✗
 CC BY NC SA	✓	✓	✓	✗	✓	✗	✓	✗
 CC BY NC ND	✗	✗	✗	✗	✗	✗	✗	✗

"If there is a check mark in the box where [a] row and column intersect, then [works with those licenses] can be remixed. If there is an "X" in the box, then the works may not be remixed unless an exception or limitation applies."

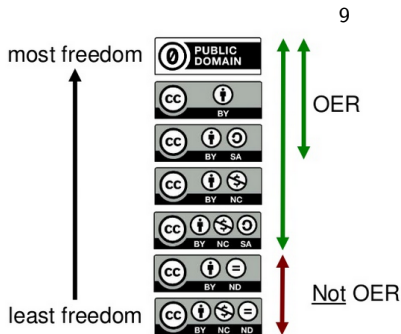
The Adapter's License Chart

Adapter's license chart		Adapter's license						
		BY	BY-NC	BY-NC-ND	BY-NC-SA	BY-ND	BY-SA	PD
Status of original work	PD	Green	Green	Green	Green	Green	Green	Green
	BY	Green	Green	Green	Green	Green	Green	Yellow
	BY-NC	Yellow	Green	Green	Green	Yellow	Yellow	Yellow
	BY-NC-ND	Gray	Gray	Gray	Gray	Gray	Gray	Gray
	BY-NC-SA	Gray	Gray	Gray	Green	Gray	Gray	Gray
	BY-ND	Gray	Gray	Gray	Gray	Gray	Gray	Gray
	BY-SA	Gray	Gray	Gray	Gray	Gray	Green	Gray

“When creating an adaptation of material under the license identified in the left-hand column, you may license your contributions to the adaptation under one of the licenses indicated on the top row if the corresponding box is green. CC does not recommend using a license if the corresponding box is yellow, although doing so is technically permitted by the terms of the license. ... Dark gray boxes indicate those licenses that you may not use as your adapters license.”

Things I wondered about the License Compatibility Chart

- Why are there are two columns for the public domain?
- Why is it called a **License** Compatibility Chart when neither the Public Domain Mark nor CC0 is a license?
- Why are icons in that order and not the order from “more freedom” to “less freedom” used all over the OER world?
- Should I memorize it?⁸



⁸ Oy, vey.

⁹ From [Open licenses](#) by Alek Tarkowski, distributed under a [CC-BY 4.0 license](#).

Things I wondered about the Adapter's Chart

- Why does it have abbreviations and not icons ... or why does the other chart have icons and not abbreviations?
- Why does it use colored boxes to convey information, not symbols?
- Why is it called an Adapter's **License** Chart when "PD" is not a license?
- Why are the column labels the same as the row labels ... but in a different order?
- Should I memorize it?¹⁰

And, most perplexing

- What's with those yellow boxes?

¹⁰ Again, Oy, vey.

Things I wondered about both charts

- Is there some relationship between them?
- If so, maybe OER practitioners don't have to memorize them both!
- But, if so, why aren't them some strange marks which are neither an "X" nor a check mark, in the License Compatibility Chart, as a consequence of the dreaded yellow boxes?
- Could both of them get a row and column for "all-rights-reserved ©," or would that make no sense for some reason?
- Could they both be made more accessible? *E.g.*, the Adapter's License Chart uses color only to convey information, which is not a good idea.

First, cosmetic changes

We want to include public domain (only once, though) as a column and row label, so let's stop calling them "licenses," rather using "copyright statuses."

Another non-license copyright status we should definitely include is "all-rights-reserved ©" – practitioners do wonder if they can use works which have that status, and if others will be able to apply that status to their work or its derivatives in the future. Let's answer these concerns in more complete charts.

It should not be hard to put all the copyright statuses in the same order for columns and rows, on both charts, and in an order based on the "more freedom" to "less freedom" axis widely used in the OER world.

We can definitely make them more accessible.

Next, there is indeed a relationship

A *remix* of two original works A and B is nothing more than a single work C which is simultaneously a derivative of A and a derivative of B.

Therefore, the License Compatibility Chart – or we should call it the **Remix Compatibility Chart** to avoid using the word “license” – is nothing other than an table of answers to the question:

Does there exist a single copyright status for the work C which can be simultaneously a valid status on a derivative of A and a valid status on a derivative of B?

In other words, is there a single column in the Adapter’s License chart – or, rather, let’s call it the **Adaptation Status Chart** to avoid the “license” – corresponding to a copyright status for C which has a green box in both the rows corresponding to the status of A and the row for the status of B?

So we will need to memorize, at most, the Adaptation Status Chart.

What about those yellow boxes?

Remember

Adapter's license chart		Adapter's license						
		BY	BY-NC	BY-NC-ND	BY-NC-SA	BY-ND	BY-SA	PD
Status of original work	PD							
	BY							
	BY-NC							
	BY-NC-ND							
	BY-NC-SA							
	BY-ND							
	BY-SA							

The FAQ text actually says

“CC does not recommend using a license if the corresponding box is yellow, although doing so is technically permitted by the terms of the license. If you do, you should take additional care to mark the adaptation as involving multiple copyrights under different terms so that downstream users are aware of their obligations to comply with the licenses from all rights holders.”

First shock: works under PD may not be completely free

Notice the two yellow boxes in the column under PD: derivatives of works under CC BY and CC BY-NC can, technically, be put into the public domain. (This can also happen “naturally,” due to copyright expiration.¹¹)

But, as the FAQ text says, future users must comply with all license terms, including attribution.

Hence there can be works under PD for which you must nevertheless give attribution to some antecedent work from which that PD work was derived – **works in the public domain may not completely free of copyright encumbrances!**

¹¹Exercise to the reader: think about different durations of individually and corporate-owned copyrights.

Small aftershock: same thing for ARR ©

While there is no column for “ARR ©” in the original of this chart, we intended to add one, and just as for PD, the derivative of a work under CC BY or CC BY-NC could be put under someone’s ARR ©.

Hence there can be works under someone’s ARR © over which they nevertheless do not have complete control, in that they must always give attribution to some antecedent work whenever they use that work.

Second shock: BY-NC is viral

That language in the FAQ brings our attention to downstream works.

There's also a yellow box for a BY derivative of a BY-NC work. But I thought NC only applied to the work itself, not its potential derivatives – if you want to impose NC on the derivative works, you have to use BY-NC-SA, I thought.

I was wrong. BY-NC imposes the non-commercial restriction on re-use of a work and on uses of any derivatives of that work!

The legal code

Every once and a while, it is good practice to screw your courage to the sticking place and look at the legal code. In fact, in [the legal code for BY-NC 4.0](#) we find:

“Section 2 - Scope

a. License grant

1. Subject to the terms and conditions of this Public License, the Licensor hereby grants You a worldwide, royalty-free, non-sublicensable, non-exclusive, irrevocable license to exercise the Licensed Rights in the Licensed Material to:
 - A. reproduce and Share the Licensed Material, in whole or in part, for NonCommercial purposes only; and
 - B. produce, reproduce, and Share Adapted Material for NonCommercial purposes only.”

Acronyms for new charts

PD	"Public Domain." This may be indicated on the work by a mention of the CC0 Public Domain Dedication tool and/or with its symbol  , or by the Public Domain Mark  , or the adapter may simply know, <i>e.g.</i> , because of its age, that a work is in the public domain.
BY	Creative Commons Attribution license, often indicated by the symbol  .
BY-SA	Creative Commons Attribution-ShareAlike license, often indicated by the symbol  .
BY-NC	Creative Commons Attribution-NonCommercial license, often indicated by one of these symbols, depending upon region  or  .
BY-NC-SA	Creative Commons Attribution-NonCommercial-ShareAlike license, often indicated by one of these symbols, depending upon region  or  .
BY-ND	Creative Commons Attribution-NoDerivatives license, often indicated by the symbol  .
BY-NC-ND	Creative Commons Attribution-NonCommercial-NoDerivatives license, often indicated by one of the symbols  or  .
ARR ©	"All-rights-reserved copyright." This is the traditional form of copyright outside of open licensing approaches. It may be indicated on a work with the copyright symbol © together with the phrase "all rights reserved," but not always: some works have the symbol © and then go on to add a Creative Commons license statement (since CC licenses <i>are built on top of copyright!</i>), and some works have no copyright statement at all but fall into the domain of all-rights-reserved copyright as a default.

A new chart for adaptation

Adaptation Status Chart		Status of Adaptation							
		PD	BY	BY-SA	BY-NC	BY-NC-SA	BY-ND	BY-NC-ND	ARR ©
Status of Original Work	PD	✓	✓	✓	✓	✓	✓	✓	✓
	BY	✓	✓	✓	✓	✓	✓	✓	✓
	BY-SA	✗	✗	✓	✗	✗	✗	✗	✗
	BY-NC	✓ _{NC}	✓ _{NC}	✓ _{NC}	✓	✓	✓ _{NC}	✓	✓ _{NC}
	BY-NC-SA	✗	✗	✗	✗	✓	✗	✗	✗
	BY-ND	✗	✗	✗	✗	✗	✗	✗	✗
	BY-NC-ND	✗	✗	✗	✗	✗	✗	✗	✗
	ARR ©	✗	✗	✗	✗	✗	✗	✗	✗

Key for the new adaptation chart

✓ ⁺	This adaptation status is permitted without any additional permissions or conditions.
✓	This adaptation status is permitted without any additional permissions under the condition: the adaptation, as well as any downstream adaptations which may be made in the future which have enough shared expression with the original work to be considered as adaptations of that work, must give attribution to the original work and its creator.
✓ ⁻	This adaptation status is technically identical to the one labeled ✓ immediately above, <i>i.e.</i> : This adaptation status is permitted without any additional permissions under the condition: the adaptation, as well as any downstream adaptations which may be made in the future which have enough shared expression with the original work to be considered as adaptations of that work, must give attribution to the original work and its creator. However, in this case, since the adaptation status is not one with a CC license, <i>this attribution requirement is usually unexpected and therefore should be clearly stated alongside the adaptation.</i>
✓ ^{NC}	This adaptation status is permitted without any additional permissions under the condition: the adaptation, as well as any downstream adaptations which may be made in the future which have enough shared expression with the original work to be considered as adaptations of that work, must give attribution to the original work and its creator and may only be used for non-commercial purposes. <i>If the adaptation status is not one with a CC license, these additional requirements are usually unexpected and therefore should be clearly stated alongside the adaptation.</i>
×	This adaptation status is not permitted without additional permissions.

A new chart for remix

Remix Compatibility Chart		Status of Work A							
		PD	BY	BY-SA	BY-NC	BY-NC-SA	BY-ND	BY-NC-ND	ARR ©
Status of Work B	PD	✓	✓	✓	✓	✓	✗	✗	✗
	BY	✓	✓	✓	✓	✓	✗	✗	✗
	BY-SA	✓	✓	✓	✓ _{NC}	✗	✗	✗	✗
	BY-NC	✓	✓	✓ _{NC}	✓	✓	✗	✗	✗
	BY-NC-SA	✓	✓	✗	✓	✓	✗	✗	✗
	BY-ND	✗	✗	✗	✗	✗	✗	✗	✗
	BY-NC-ND	✗	✗	✗	✗	✗	✗	✗	✗
	ARR ©	✗	✗	✗	✗	✗	✗	✗	✗

Key for the new remix chart

✓	This remix is permitted without any additional permissions or conditions.
✓	This remix is permitted without any additional permissions under the condition: the remix, as well as any downstream adaptations which may be made in the future which have enough shared expression with whichever of works A and/or B was under a CC license to be considered as adaptations of those works, must give attribution to the original CC-licensed work(s) and creator(s).
✓ _{NC}	This remix is permitted without any additional permissions under the condition: the remix, as well as any downstream adaptations which may be made in the future which have enough shared expression with whichever of the original works was under NC to be considered as adaptations of that work, may only be used for NonCommercial purposes and must give attribution to both original works and creators.
×	This remix is not permitted without additional permissions.

Another new chart for remix

Allowed Remix Status Chart		Status of Work A									
		PD		BY		BY-SA		BY-NC		BY-NC-SA	
Status of Work B	PD	↗ PD	↗ BY-NC-SA	↗ PD	↗ BY-NC-SA	✗ PD	✗ BY-NC-SA	↗ _{NC} PD	↗ BY-NC-SA	✗ PD	↗ BY-NC-SA
		↗ BY	↗ BY-ND	↗ BY	↗ BY-ND	✗ BY	✗ BY-ND	↗ _{NC} BY	↗ _{NC} BY-ND	✗ BY	✗ BY-ND
		↗ BY-SA	↗ BY-NC-ND	↗ BY-SA	↗ BY-NC-ND	✗ BY-SA	✗ BY-NC-ND	↗ _{NC} BY-SA	↗ _{NC} BY-NC-ND	✗ BY-SA	✗ BY-NC-ND
		↗ BY-NC	↗ ARR ©	↗ BY-NC	↗ ARR ©	✗ BY-NC	✗ ARR ©	↗ _{NC} BY-NC	↗ _{NC} ARR ©	✗ BY-NC	✗ ARR ©
	BY	↗ PD	↗ BY-NC-SA	↗ PD	↗ BY-NC-SA	✗ PD	✗ BY-NC-SA	↗ _{NC} PD	↗ BY-NC-SA	✗ PD	↗ BY-NC-SA
		↗ BY	↗ BY-ND	↗ BY	↗ BY-ND	✗ BY	✗ BY-ND	↗ _{NC} BY	↗ _{NC} BY-ND	✗ BY	✗ BY-ND
		↗ BY-SA	↗ BY-NC-ND	↗ BY-SA	↗ BY-NC-ND	✗ BY-SA	✗ BY-NC-ND	↗ _{NC} BY-SA	↗ _{NC} BY-NC-ND	✗ BY-SA	✗ BY-NC-ND
		↗ BY-NC	↗ ARR ©	↗ BY-NC	↗ ARR ©	✗ BY-NC	✗ ARR ©	↗ _{NC} BY-NC	↗ _{NC} ARR ©	✗ BY-NC	✗ ARR ©
	BY-SA	✗ PD	✗ BY-NC-SA	✗ PD	✗ BY-NC-SA	✗ PD	✗ BY-NC-SA	✗ PD	✗ BY-NC-SA	✗ PD	✗ BY-NC-SA
		✗ BY	✗ BY-ND	✗ BY	✗ BY-ND	✗ BY	✗ BY-ND	✗ BY	✗ BY-ND	✗ BY	✗ BY-ND
		✗ BY-SA	✗ BY-NC-ND	✗ BY-SA	✗ BY-NC-ND	✗ BY-SA	✗ BY-NC-ND	✗ BY-SA	✗ BY-NC-ND	✗ BY-SA	✗ BY-NC-ND
		✗ BY-NC	✗ ARR ©	✗ BY-NC	✗ ARR ©	✗ BY-NC	✗ ARR ©	✗ BY-NC	✗ ARR ©	✗ BY-NC	✗ ARR ©
	BY-NC	↗ _{NC} PD	↗ BY-NC-SA	↗ _{NC} PD	↗ BY-NC-SA	✗ PD	✗ BY-NC-SA	↗ _{NC} PD	↗ BY-NC-SA	✗ PD	↗ BY-NC-SA
		↗ _{NC} BY	↗ _{NC} BY-ND	↗ _{NC} BY	↗ _{NC} BY-ND	✗ BY	✗ BY-ND	↗ _{NC} BY	↗ _{NC} BY-ND	✗ BY	✗ BY-ND
		↗ _{NC} BY-SA	↗ _{NC} BY-NC-ND	↗ _{NC} BY-SA	↗ _{NC} BY-NC-ND	↗ _{NC} BY-SA	✗ BY-NC-ND	↗ _{NC} BY-SA	↗ _{NC} BY-NC-ND	✗ BY-SA	✗ BY-NC-ND
		↗ _{NC} BY-NC	↗ _{NC} ARR ©	↗ _{NC} BY-NC	↗ _{NC} ARR ©	✗ BY-NC	✗ ARR ©	↗ _{NC} BY-NC	↗ _{NC} ARR ©	✗ BY-NC	✗ ARR ©
	BY-NC-SA	✗ PD	↗ BY-NC-SA	✗ PD	↗ BY-NC-SA	✗ PD	✗ BY-NC-SA	✗ PD	↗ BY-NC-SA	✗ PD	↗ BY-NC-SA
		✗ BY	✗ BY-ND	✗ BY	✗ BY-ND	✗ BY	✗ BY-ND	✗ BY	✗ BY-ND	✗ BY	✗ BY-ND
		✗ BY-SA	✗ BY-NC-ND	✗ BY-SA	✗ BY-NC-ND	✗ BY-SA	✗ BY-NC-ND	✗ BY-SA	✗ BY-NC-ND	✗ BY-SA	✗ BY-NC-ND
		✗ BY-NC	✗ ARR ©	✗ BY-NC	✗ ARR ©	✗ BY-NC	✗ ARR ©	✗ BY-NC	✗ ARR ©	✗ BY-NC	✗ ARR ©

Key for the other new remix chart

✓*	This remix of the specified status is permitted without any additional permissions or conditions.
✓	This remix of the specified status is permitted without any additional permissions under the condition: the remix, as well as any downstream adaptations which may be made in the future which have enough shared expression with whichever of works A and/or B was under a CC license to be considered as adaptations of those works, must give attribution to the original CC-licensed work(s) and creator(s).
✓	This remix status is technically identical to the one labeled  immediately above, <i>i.e.</i>: This remix of the specified status is permitted without any additional permissions under the condition: the remix, as well as any downstream adaptations which may be made in the future which have enough shared expression with whichever of works A and/or B was under a CC license to be considered as adaptations of those works, must give attribution to the original CC-licensed work(s) and creator(s). However, in this case, since the remix status is not one with a CC license, <i>this attribution requirement is usually unexpected and therefore should be clearly stated alongside the adaptation.</i>
✓ _{NC}	This remix of the specified status is permitted without any additional permissions under the condition: the remix, as well as any downstream adaptations which may be made in the future which have enough shared expression with whichever (possibly both) of the original works was under NC to be considered as adaptations of that work, may only be used for non-commercial purposes and must give attribution to either (or both) original works and creators if CC-licensed. <i>If the remix status is not one with a CC license, these additional requirements are usually unexpected and therefore should be clearly stated alongside the remix.</i>
✗	This remix is not permitted without additional permissions.

Summary

Take-aways:

- Works in the public domain can have copyright-based encumbrances.
- The BY-NC license has a viral aspect.
- A new, improved, more complete, chart for adaptation is here:
<https://poritz.net/jonathan/cc/charts/adaptation.html>
- A new, improved, more complete, chart for remix is here:
<https://poritz.net/jonathan/cc/charts/remix.html>

Questions, Comments, and Contact Info

Questions? Comments?

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¹² subject to CC-BY-SA