

January 17, 2011

Attn: Steve Midgley
Office of Educational Technology
U.S. Department of Education
400 Maryland Avenue, SW., Room 7E202
Washington, DC 20202-0001

Comments of Creative Commons

Creative Commons (CC) is pleased to submit comments to the Department of Education's ("Department") "Assessment Technology Standards Request for Information" ("RFI"). Creative Commons (<http://creativecommons.org>) is a 501(c)(3) nonprofit corporation dedicated to making it easier for people to share and build upon the work of others, consistent with the rules of copyright. CC develops legal and technical tools used by individuals, cultural, educational, and research institutions, governments, and companies worldwide to overcome barriers to sharing and innovation.

Over the last eight years, Creative Commons has focused on developing legal and technological tools to share information on the Internet, most notably a suite of free copyright licenses and public domain legal tools. We've observed that concerns around interoperability are lessened within an ecosystem of openness that includes a transparent, collaborative development process leveraging open source software and open content.

Creative Commons licenses can help satisfy the requirement that "assessment content...be made freely available to any State, technology platform provider, or others that request it for purposes of administering assessments". CC licenses are easy to understand and use, with 1) a human-readable deed that simplifies the terms of each license into a few universal icons and non-technical language, 2) lawyer-readable legal text, which has been vetted by a global team of legal experts, and 3) machine-readable code that enables search and discovery via search engines such as Google. CC tools lower the transaction costs normally associated with seeking permission to use works by granting some rights in advance, consistent with the rules of copyright.

Answers to specific questions

3.2.4 Intellectual Property. What are the potential benefits and costs to the Federal Government, States, and other end-users of different IP restrictions or permissions that could be applied to technology standards and specifications? Which types of licensed or open IP (*e.g.*, all rights reserved, MIT Open License, or Gnu Public License) should be considered as a government technology standard? How should openness relating to the

IP of technology standards be defined and categorized (*e.g.*, Open Source Initiative-compatible license, free to use but not modify, non-commercial use only, or proprietary).

Adopting technology standards and specifications that are openly licensed can increase competition, make it easier for groups to collaborate, provide for downstream innovation, and promote interoperability. However, there's much more to making a standard or protocol usable than just placing its specification under liberal copyright terms--open licenses such as Creative Commons licenses address copyright, and not other IP issues such as patent or trademark rights. Still, one benefit to releasing a specification under a liberal copyright license is that it can be useful "for facilitating ongoing collaboration on the specification itself, extensions of the specification, and instructional materials and other non-software works around the specification—in other words, precisely the works and activities impacted by the copyright status of the text." Using a public license for a specification can help break down at least one of the barriers to collaboration between communities of users.¹

The IP of government funded technology standards should be "open" by default, where open is inclusive of specification text and supporting materials (under a liberal CC license), any software such as compliance test suites and reference implementations (under a free/open source software license²), and royalty-free licensing of any patents required to implement such standards.³ This default assumption is that resources arising from public funding should be released into the public domain or made available under a copyright license that permits the public, in turn, to freely use and re-purpose them for any reason.

3.2.19 Learning and Training. What applications or technology standards exist that can apply assessment results to support learning and training? Are there technology standards or applications that support more than one of the following: Early learning, elementary/secondary education, postsecondary education, job training, corporate training, and military training?

Assessment results released under Creative Commons licenses can support learning and training because CC tools help pre-clear various legal and technical hurdles to sharing. In this way, openly licensed content can be more easily moved between systems and tools. CC licenses that permit the creation of derivative works can extend support to related communities, enabling translations of assessment content into other languages, adaptations

¹ Mike Linksvayer, "What good is a CC licensed specification?" Creative Commons blog, March 29, 2008. <http://creativecommons.org/weblog/entry/8165>

² Open source software licenses that meet the Open Source Definition. <http://opensource.org/licenses/>

³ World Wide Web Consortium Patent Policy. <http://www.w3.org/Consortium/Patent/>

for viewing in alternative formats such as mobile devices, and customizations to match the intended audience.⁴

3.2.28 Accessibility. How do technology standards ensure that the platforms are accessible to all persons with disabilities? How can technology standards ensure the availability of accommodations based on the individual needs of persons with disabilities? What factors are important to consider so that accessibility capabilities can be included within an interoperable technology standard, both for end-users, as well as operators, teachers, and other administrators? How are issues related to Universal Design for Learning (UDL) relevant to standards for accessible use? How can technology standards provide for, improve, or enhance Section 504 and 508 of the Rehabilitation Act compliance for assessment technology?

Where copyright intersects with accessibility, Creative Commons licenses that allow for the creation of derivative works permit the transformation of content into alternate formats, increasing accessibility for persons with disabilities because these can be converted into accessible formats, such as audio and Braille refresh, without having to seek extra permissions or pay royalties for adaptations to take place.

3.2.33 Derivation. For technology standards, do copyright licenses for publications and all supporting materials and software licenses for software artifacts permit the unrestricted creation and dissemination of derivative works (a.k.a. “open licensed”)? Do such open licenses contain restrictions that require publication and dissemination of such works in a manner consistent with the openness criteria described by, for example, a GNU Public License (a.k.a. “viral licensed”) or an MIT Public License (a.k.a. “academic licensed”)? Are there policies or license restrictions on derivative works intended to prevent re-packaging, re-sale, or modifications without re-publication for assessment technology standards?

The Creative Commons licenses that do not contain the NoDerivatives (ND) clause permit the creation of derivative works. These include the Attribution (BY), Attribution ShareAlike (BY-SA), Attribution NonCommercial (BY-NC), and Attribution-NonCommercial-ShareAlike (BY-NC-SA) licenses. Content released under the CC0 public domain waiver also permits the unrestricted creation and dissemination of derivative works. The Creative Commons licenses that contain the ShareAlike (SA) condition permit others to distribute derivative works only under a license identical to the original work. These include the Attribution ShareAlike (BY-SA) and Attribution-NonCommercial-ShareAlike (BY-NC-SA) licenses.

3.2.34 Licensing Descriptions (for materials contained within the standard, not for the standard’s licensing itself). How do technology standards address licensing terms for assessment resources described within the technology standard? Are there successful

⁴ For a complete description of the Creative Commons licenses, see <http://creativecommons.org/licenses/>

technology standards or approaches for describing a wide variety of license types, including traditional per-use licensing, Web-fulfillment, free (but licensed), open (but licensed, including commercial or non-commercial use permitted), and public domain status. Are there other resource licensing issues that should be addressed within a technology standard as a best practice?

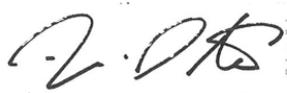
Even where Creative Commons licenses are not used as the licensing vehicle itself (for example, with software implementation of a standard), many projects use CC licensing for the documentation and descriptive materials (text, video tutorials, etc.) associated with their projects and products. Adopting CC licensing for the documentation and description of technology standards ensures that information resources *about* the standard will be widely disseminated and available on the Internet, facilitating both competition and interoperability.

Conclusion

In developing assessment technology standards, the Department should adopt open technologies leveraging open content. Such adoptions help ensure that assessment materials can flow more easily between systems because copyrights have been cleared in advance. Any policy directives flowing from this RFI should require standardized, public standards, protocols, technologies, tools, and licenses. The adoption of technology standards that meet these requirements will help ensure that public investments in assessment instruments and related technology produce widespread benefits in the education sector and beyond, and at the same time, contribute to a competitive and innovative market place.

Thank you again for providing this opportunity to provide feedback on this RFI. We would be pleased to answer any follow up questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joi Ito', is positioned above the typed name.

Joi Ito, CEO
Creative Commons