



Appendix 2: Background to the OpenSpires Licence

In September 2008 the University of Oxford launched its presence on Apple Computers iTunesU portal, making video and audio podcasts available to a global audience. Oxford's participation has been a great success, with over 2.5 million downloads to date and over 500 hours of material available. Podcasts are available both via the web and via Apples iTunes application.

In April 2009, OUCS successfully bid for funds from the Higher Education Academy and the Joint Information Systems Committee to make some of these podcasts available under Creative Commons licences. These licences allow greater freedom to users than the licence provided for iTunesU content. For example, the iTunesU licence does not permit a teacher to play a podcast to a class of students, make a translation of a podcast, or to take an excerpt from a podcast and include it in teaching materials. The project, called OpenSpires, is funded as part of a £5.7m national pilot programme to produce and release more open educational resources (OER) and has been very successful over its 11 months of existence. With the cooperation of over 100 Oxford academics, OpenSpires has made over 150 hours of material available under the Creative Commons Attribution-Non-commercial-Sharealike licence, including eight entire lecture series.

In order to start the project quickly and begin gathering material, the OpenSpires project – aided by Legal Services - created an assignment form for contributors to sign, based upon a form already in use at the Oxford Internet Institute. (This was necessary because the iTunesU form is drafted to facilitate release via iTunesU only and is therefore too specific to enable Creative Commons release.) While many were happy to sign the assignment form, and thereby give the necessary rights in the material to the University, over the course of the project some problems have emerged:

- Where academics are contributing to both iTunesU and OpenSpires, they must read and sign two lengthy forms which are in some respects duplicative.
- Some academics are unhappy with giving their rights in their contribution to the University, although they would be happy to license them.

Therefore – again with the help of Legal Services – the OpenSpires project has created a simpler, unified form that takes licences from contributors that are broad enough to enable both iTunesU and OpenSpires release (agreement to OpenSpires release is indicated by ticking a box). We hope that this new form is also drafted in such a way as to be usable in future podcasting and related activities within the University. By reducing the complexity of the legal documentation and embedding the option to release under Creative Commons, we hope that the flow of open educational resources from Oxford will be able to continue after funding for the OpenSpires project ends. The new form was submitted to University Council for consideration and was approved as a replacement for the old form.

THE NEW FORM

PODCAST CONTRIBUTION FORM (MARCH 2010)

Please return this form to Peter Robinson, Oxford University Computing Services, 13 Banbury Road, Oxford.

List of Contributions (recordings, presentations, reading lists etc)

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.....
.....

1. Contributor's Contact Details

Printed name:

Position:

Department/Unit:

Address:

.....

.....

.....

Post Code:

Contact email:

Contact phone:

Contact fax:

2. Warranty

(a) The Contributor represents and warrants to the University as follows:-

(i) to the best of the Contributor's knowledge the Contributor or the University of Oxford ('University') is the sole owner of the Contribution(s), or (if this is not the case) the Contributor has been authorised by the owner of the Contribution(s) to contribute the Contribution(s) on the basis of the licences set out below;

(ii) the Contributor has used reasonable efforts to secure all necessary licences, consents and authorisation with respect to the use of the Contribution(s) and all elements of the Contribution(s), to the full extent contemplated by the licences rehearsed below;

(iii) to the best of the Contributor's knowledge all the content of the Contribution(s) is lawful (and not, for example, defamatory or pornographic); and does not violate any third party rights (for example, copyright);

(iv) to the best of the Contributor's knowledge the contribution of the Contribution(s), and the public availability of the Contribution(s), will not be in breach of data protection legislation or confidentiality obligations.

3. Licences

(a) If the Contributor is a member of the University contributing material, the intellectual property rights in which are claimed by the University under the University's Statutes, then the following sentence will not apply. Otherwise, in consideration of the sum of one pound now paid by the University to the Contributor, the Contributor, as beneficial owner of the necessary rights or as the licensee of the owner (under a licence which grants the necessary right to sub-license) now grants to the University a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable licence to reproduce, prepare transcriptions and any other derivative works of, publicly display, publicly perform, sublicense, and distribute the Contributions and such derivative works with full attribution of the Contributor. In respect of Contributions to be made available via iTunes, the University is required to grant the iTunes U Licences (as defined and set out in Appendix 1) and, for avoidance of doubt, the Contributor's licence granted pursuant to this paragraph 3(a) is deemed to permit the University to grant the iTunes U Licences in respect of the Contribution(s).

(b) Furthermore, where it is a case of the Contributor delivering a lecture which is to be recorded for the purpose of the Contribution(s), the Contributor as the owner of the performer's rights in the lecture (and the making available right) consents to the recording of the lecture by or for the University and to the distribution of the Contributions by the University in a variety of forms including (but not limited to) transmission as a webcast or podcast through the University's web presence, the creation of CDs or DVDs, and delivery via third party portals, such as iTunes.

By ticking this box the Contributor requests that the Contributions be made available by the University under a Creative Commons UK: England & Wales Attribution-Non-Commercial-Share Alike 2.0 licence (see appendix 2)

SIGNED for and on behalf of the University:

SIGNED by the Contributor

Name:

Position:

Signature:

Signature:

Date:

Date:

Please return this form to Peter Robinson, Oxford University Computing Services, 13 Banbury Road, Oxford.

APPENDIX 1

The University has been required to grant iTunes S.a.r.l. (and members of the group of companies of which iTunes S.a.r.l. forms part) licences in the following terms ("the iTunes U Licences"):

(i) a nonexclusive, royalty-free right and license to use, reproduce, modify the format and display of content (not the substance of any content), distribute, transmit, perform and display content on the iTunes U Site and the iTunes Store throughout the world, in whole or in part, by any means now known or hereafter developed (such as, but not limited to, websites and electronic downloads);

(ii) a nonexclusive, royalty-free right and license to store or cache content on iTunes S.a.r.l.'s servers;

(iii) the royalty-free right to use, reproduce, distribute and display content throughout the world, by any means now known or hereafter developed, for promotional and marketing purposes to demonstrate the iTunes U Site and iTunes technology (I) on the iTunes U section of the iTunes Store and (II) on other areas of the iTunes Store or iTunes websites, including, but not limited to, creating reformatted graphical banners that link to the content;

(iv) the royalty-free right to use, reproduce, distribute and display the content throughout the world, by any means now known or hereafter developed, for promotional and marketing purposes, in order to demonstrate the iTunes U Site and iTunes technology in iTunes marketing collateral, at iTunes sponsored venues and events and for any other similar lawful purpose.

APPENDIX 2

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'The Licensor' [one or more legally recognised persons or entities offering the Work under the terms and conditions of this Licence] and

'You'

agree as follows:

1. Definitions

- a. **"Attribution"** means acknowledging all the parties who have contributed to and have rights in the Work or Collective Work under this Licence.
- b. **"Collective Work"** means the Work in its entirety in unmodified form along with a number of other separate and independent works, assembled into a collective whole.
- c. **"Derivative Work"** means any work created by the editing, modification, adaptation or translation of the Work in any media (however a work that constitutes a Collective Work will not be considered a Derivative Work for the purpose of this Licence). For the avoidance of doubt, where the Work is a musical composition or sound recording, the synchronization of the Work in timed-relation with a moving image ("synching") will be considered a Derivative Work for the purpose of this Licence.
- d. **"Licence"** means this Creative Commons England and Wales Public Licence agreement.

- e. **"Licence Elements"** means the following high-level licence attributes indicated in the title of this Licence: Attribution, Non-Commercial, Share-Alike.
- f. **"Non-Commercial"** means "not primarily intended for or directed towards commercial advantage or private monetary compensation". The exchange of the Work for other copyrighted works by means of digital file-sharing or otherwise shall not be considered to be intended for or directed towards commercial advantage or private monetary compensation, provided there is no payment of any monetary compensation in connection with the exchange of copyrighted works.
- g. **"Original Author"** means the individual (or entity) who created the Work.
- h. **"Work"** means the work protected by copyright which is offered under the terms of this Licence.
- i. For the purpose of this Licence, when not inconsistent with the context, words in the singular number include the plural number.

2. Licence Terms

2.1 The Licensor hereby grants to You a worldwide, royalty-free, non-exclusive, Licence for Non-Commercial use and for the duration of copyright in the Work.

You may:

- copy the Work;
- create one or more Derivative Works;
- incorporate the Work into one or more Collective Works;
- copy Derivative Works or the Work as incorporated in any Collective Work; and
- publish, distribute, archive, perform or otherwise disseminate the Work or the Work as incorporated in any Collective Work, to the public in any material form in any media whether now known or hereafter created.

HOWEVER,

You must not:

- impose any terms on the use to be made of the Work, the Derivative Work or the Work as incorporated in a Collective Work that alter or restrict the terms of this Licence or any rights granted under it or has the effect or intent of restricting the ability to exercise those rights;
- impose any digital rights management technology on the Work or the Work as incorporated in a Collective Work that alters or restricts the terms of this Licence or any rights granted under it or has the effect or intent of restricting the ability to exercise those rights;
- sublicense the Work;
- subject the Work to any derogatory treatment as defined in the Copyright, Designs and Patents Act 1988.

FINALLY,

You must:

- make reference to this Licence (by Uniform Resource Identifier (URI), spoken word or as appropriate to the media used) on all copies of the Work and Collective Works published, distributed, performed or otherwise disseminated or made available to the public by You;
- recognise the Licensor's / Original Author's right of attribution in any Work and Collective Work that You publish, distribute, perform or otherwise disseminate to the public and ensure that You credit the Licensor / Original Author as appropriate to the media used; and
- to the extent reasonably practicable, keep intact all notices that refer to this Licence, in particular the URI, if any, that the Licensor specifies to be associated with the Work, unless such URI does not refer to the copyright notice or licensing information for the Work.

Additional Provisions for third parties making use of the Work

2.2. Further licence from the Licensor

Each time You publish, distribute, perform or otherwise disseminate

- the Work; or
- any Derivative Work; or
- the Work as incorporated in a Collective Work

the Licensor agrees to offer to the relevant third party making use of the Work (in any of the alternatives set out above) a licence to use the Work on the same terms and conditions as granted to You hereunder.

2.3. Further licence from You

Each time You publish, distribute, perform or otherwise disseminate

- a Derivative Work; or

- a Derivative Work as incorporated in a Collective Work

You agree to offer to the relevant third party making use of the Work (in either of the alternatives set out above) a licence to use the Derivative Work on any of the following premises:

- a licence on the same terms and conditions as the licence granted to You hereunder; or
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- any other Creative Commons licence with the same Licence Elements.

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The rights granted to You under this Licence shall terminate automatically upon any breach by You of the terms of this Licence. Individuals or entities who have received Collective Works from You under this Licence, however, will not have their Licences terminated provided such individuals or entities remain in full compliance with those Licences.

6. General

6.1. The validity or enforceability of the remaining terms of this agreement is not affected by the holding of any provision of it to be invalid or unenforceable.

6.2. This Licence constitutes the entire Licence Agreement between the parties with respect to the Work licensed here. There are no understandings, agreements or representations with respect to the Work not specified here. The Licensor shall not be bound by any additional provisions that may appear in any communication in any form.

6.3. A person who is not a party to this Licence shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

6.4. This Licence shall be governed by the law of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.

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7.1. Neither the Licensor nor the User may use the Creative Commons logo except to indicate that the Work is licensed under a Creative Commons Licence. Any permitted use has to be in compliance with the Creative Commons trade mark usage guidelines at the time of use of the Creative Commons trade mark. These guidelines may be found on the Creative Commons website or be otherwise available upon request from time to time.

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**THE OLD FORM:
PODCAST CONTRIBUTION FORM FOR ITUNES U - VERSION 2 (JUNE 09)**

Please return this form to Peter Robinson, Oxford University Computing Services, 13 Banbury Road, Oxford.

Title of Podcast(s) (RSS feed title)

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1. Contributor's Contact Details

Printed name:

Position:

Department/Unit:

Address:

Post Code:

Contact email:

Contact phone:

Contact fax:

2. Warranty

(a) The Contributor represents and warrants to the University as follows:-

(i) to the best of the Contributor's knowledge the Contributor or the University is the sole owner of the Podcast(s), or (if this is not the case) the Contributor has been authorised by the owner of the Podcast(s) to contribute the Podcast(s) to iTunesU and the iTunes Store on the basis of the licences rehearsed below;

(ii) the Contributor has used reasonable efforts to secure all necessary licences, consents and authorisation with respect to the use of the Podcast(s) and all elements of it or them, to the full extent contemplated by the licences rehearsed below;

(iii) to the best of the Contributor's knowledge all the content of the Podcast(s) is lawful (and not, for example, defamatory or pornographic); and does not violate any third party rights (for example, copyright);

(iv) to the best of the Contributor's knowledge the contribution of the Podcast(s), and the availability of the Podcast(s) on iTunes U and the iTunes Store, will not be in breach of data protection legislation or confidentiality obligations.

(b) The context here is that the University has been required to give representations and warranties corresponding to the above to iTunes S.a.r.l., the company which runs the iTunes U service.

3. Licences

(a) The University has been required to grant iTunes S.a.r.l. (and members of the group of companies of which iTunes S.a.r.l. forms part) licences in the following terms ("the iTunes U Licences"):

(i) a nonexclusive, royalty-free right and license to use, reproduce, modify the format and display of content (not the substance of any content), distribute, transmit, perform and display content on the iTunes U Site and the iTunes Store throughout the world, in whole or in part, by any means now known or hereafter developed (such as, but not limited to, websites and electronic downloads);

(ii) a nonexclusive, royalty-free right and license to store or cache content on iTunes S.a.r.l.'s servers;

(iii) the royalty-free right to use, reproduce, distribute and display content throughout the world, by any means now known or hereafter developed, for promotional and marketing purposes to demonstrate the iTunes U Site and iTunes technology (I) on the iTunes U section of the iTunes Store and (II) on other areas of the iTunes Store or iTunes websites, including, but not limited to, creating reformatted graphical banners that link to the content;

(iv) the royalty-free right to use, reproduce, distribute and display the content throughout the world, by any means now known or hereafter developed, for promotional and marketing purposes, in order to demonstrate the iTunes U Site and iTunes technology in iTunes marketing collateral, at iTunes sponsored venues and events and for any other similar lawful purpose.

(b) If the Contributor is a member of the University contributing material, the intellectual property rights in which are claimed by the University under the University's Statutes, then the following sentence will not apply. Otherwise, in consideration of the sum of one pound now paid by the University to the Contributor, the Contributor, as beneficial owner of the necessary rights or as the licensee of the owner (under a licence which grants the necessary right to sub-license) now grants iTunes U Licences to the University with respect to the Podcast(s).

(c) Furthermore, where it is a case of the Contributor delivering a lecture which is to be recorded for the purpose of the Podcast(s), the Contributor as the owner of the performer's rights in the lecture (and the making available right) consents to the recording of the lecture by or for the University and to the inclusion of the recording in iTunes U and the iTunes Store.

(d) The licences granted above will last for the duration of the University's Agreement with iTunes S.a.r.l. The Contributor agrees that on the expiration or termination of that Agreement iTunes S.a.r.l. shall not be required to destroy any marketing collateral or any other product that contains the Podcast(s) and shall be allowed to exhaust any such remaining collateral or product within its ordinary course of business.

SIGNED for and on behalf of the University:

SIGNED by the Contributor

Name:

Position:

Signature:

Signature:

Date:.....

Date:.....