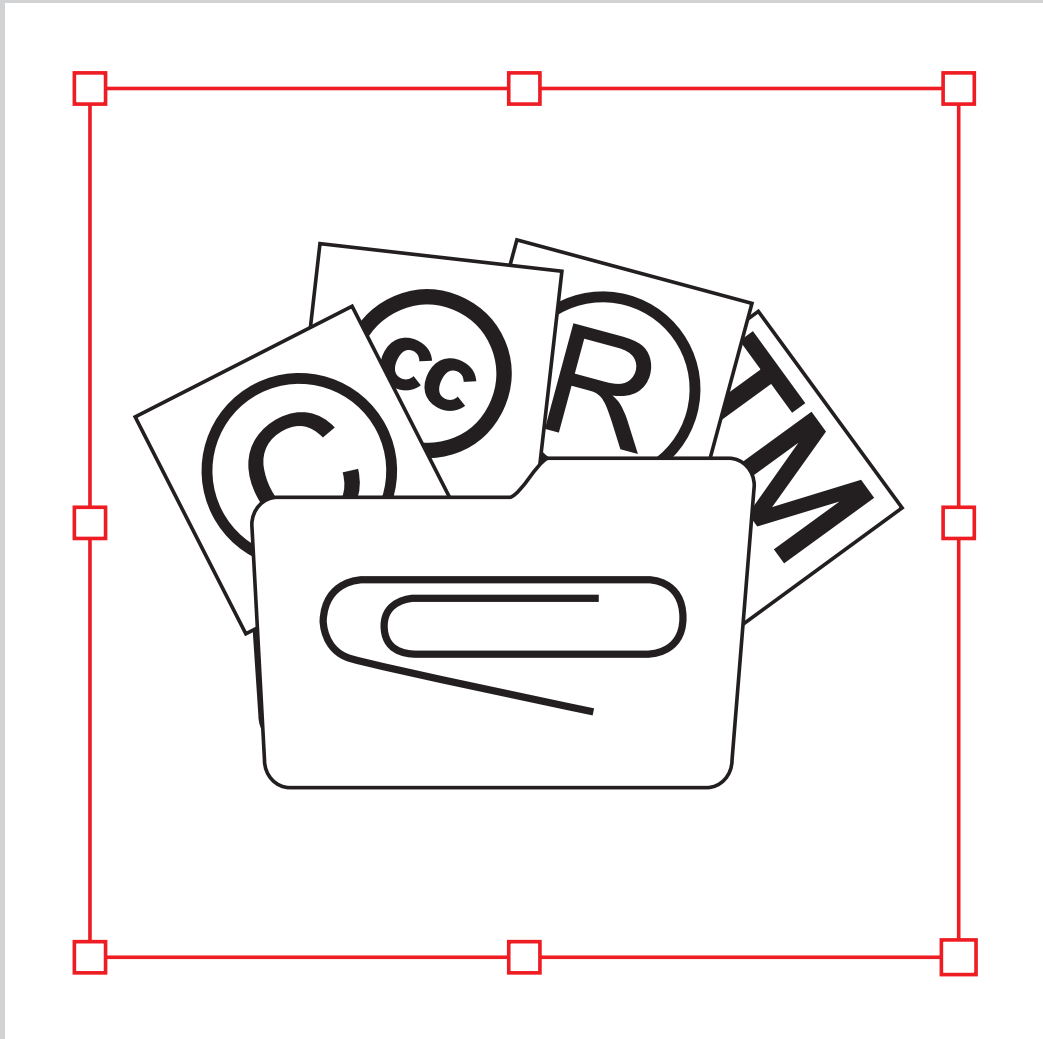


Legal basics for designers

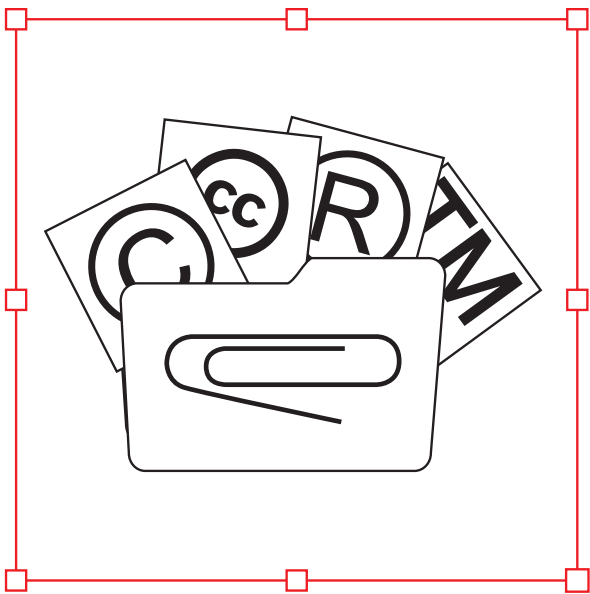


OPEN Design Contest

The Open Design Contest is about designing and sharing products that can be made with digital fabrication. The designs are published under a Creative Commons license, so that anyone can download, use and adapt the designs, and upload derived designs again!

opendesigncontest.org

Legal basics for designers



Open Design is about sharing your work with others, and about designing with others. This also brings up some confusion; how can you share your work without getting copied? What are your rights if you design something in a collaborative project? And can a commercial product be Open Design? Is it possible to make a living from your work if you open your design files?

To answer these questions, it's good to get some background on copyright and industrial design right, how design traditionally is protected and how Creative Commons licenses can be applied to design. For designers, the legal aspects of protecting their work are hard to figure out. Instead of diving into all of the legal licensing systems, it is best to first define a clear goal, and then find the best way to license your work. In this article we explain copyright, industrial design right, patent law and trademark law.

By looking at specific cases we illustrate which rights apply for designers, and how in these cases Creative Commons can be applied to achieve the goal of the designer.

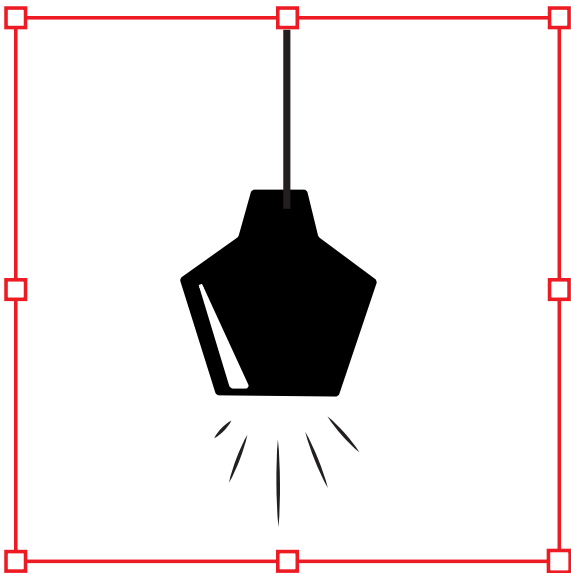
Copyright

If you make something, it is nice if you have some control about what other people will do with your work. That's where copyright law comes in. Copyright law protects works of authorship such as: books, songs, choreography, operettas, lyrics, drawings, paintings, sculptures but also computer programs and products of design and applied arts.

In order to receive copyright on a work, you have to make a work that reaches a minimum level of originality and creativity. What is protected under copyright is the expression, not the idea. This means that if you design a cardboard lampshade, you don't have copyright on the idea of making a lampshade out of cardboard, but you do have copyright on the cardboard lampshade in the specific form that you designed it. It is your creative expression. Other people can also make a cardboard lampshade; as long as they don't copy your design they are not infringing your copyright.

Copyright operates "automatically", meaning that there is no need to register in order to receive copyright. Proper registration of copyright can have certain advantages; it is a public record, it helps in an infringement suit and as an assumption for validity. Copyright usually lasts 70 years after the author's death and cannot be renewed.

Copyright is the exclusive right of the author (or right holder) of an original work to be credited for the work, to reproduce (copy), distribute, communicate to the public, translate, modify, and decide who may adapt, perform, alter or financially benefit from the author's work, and other related rights. This means that if someone wants to use, alter, adapt, modify or perform your work, they always have to ask your permission, even if they just want to publish a picture of your work on their website or blog.



A Creative Commons license helps to become more flexible in handling your copyright. You can give people certain rights/permissions in advance, like the right to use, share, or the right to build upon a work that you created. You can choose to allow only non-commercial use and it also protects the people who use your work; as long as they abide by the conditions you have specified they don't have to worry about copyright infringement. The three cases are possible scenarios about how a Creative Commons license can be applied.

Industrial Design Right

Industrial design right protects the outward appearance of a product such as the lines, contours, colours, shape and texture. It protects industrial or handcrafted products, including packaging, graphic symbols, typographic interfaces and modular products or products with multiple components, as long as the parts are visible during normal use/operation of the product.

The European Union provides Community Design. Community Design is a unitary industrial design right that covers the whole European Union and can be conferred by registration at the OHIM (Office for registration of the Internal Market, Spain). There are two types of Community

Design; Registered Community Design and Unregistered Community Design.

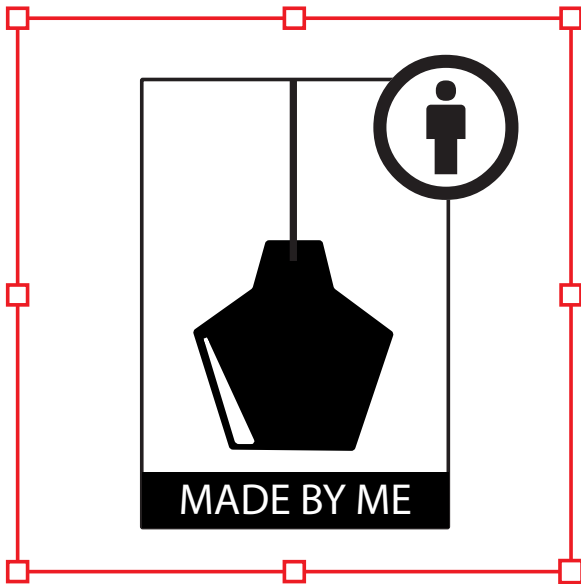
Registered Community Design lasts for 5 years and can be renewed up to 25 years. Registered Community Design offers a wide protection, similar to that offered by patent law. It gives the right holder the exclusive right to use (produce, offer, sell, rent, import, export, expose, use or stock) the design and to forbid others to use the design without his permission. If you just make a product, don't register it and then start selling it, it is called Unregistered Community Design.

Making the model publicly available creates Unregistered Community Design. A design/model is protected as an Unregistered Community Design for 3 years (the 'grace' period) from the date that the model was first available for public within the EU. An unregistered design still enjoys some, limited, protection (i.e. against commercial copying). If after those 3 years the model is still not registered, the protection expires.

Patent

Patent law protects new inventions in the field of technologies that have industrial application. A patent offers a much wider protection than copyright, inasmuch as almost any activity that can be covered by the patent is reserved to its author or right holder.

A patent is a trade-off between the government that grants an exclusive right to an inventor to manufacture, use, and sell an invention for a period of 20 years, and the inventor that/who makes public details of the invention. In order to be patented, an invention has to be novel, possess an inventive step and have industrial application. However, differently from copyright, patents do not operate automatically. You have to submit a request.



What is the application process?

If an inventor (or more often the legal department of her employer) believes to have invented something new, that possesses an inventive step, and with industrial application, then a specific request has to be filed to the relevant patent office. First, the application is checked for completeness and whether it is patentable. Then, the application is reviewed. A key element is the disclosure, or enablement requisite; the invention has to be described in such a way that the average professional in the field will be able to reproduce it. Finally, the application gets approved or rejected. The patent office analyses the patent application, and if all the requisites are met it will issue a patent for the invention.

By looking at specific cases we hereafter illustrate which rights apply for designers, and how in these cases Creative Commons can be applied to achieve the goal of the designer.

Case 1: Exposure by sharing

Case 2: Innovation by collaboration

Case 3: Sharing to improve products

IMPORTANT

The following cases are for illustrative purposes only. Do not rely on the following cases for your activity. They represent hypothetical cases of blueprints distributed under Creative Commons licenses. Creative Commons licenses are copyright licenses and do not apply to rights such as design rights, trademark, patents, etc. If you are interested in applying a Creative Commons license to your blueprints or design products you should seek specific personal legal advice from qualified legal practitioners.

Trademark

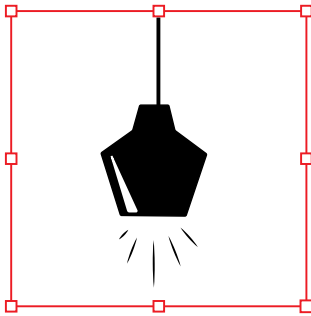
A trademark is a distinctive sign such as a word, logo, device, shape, packaging or sound, to identify the origin of goods and services. Enterprises, individuals or other legal entities can use a trademark to distinguish their product or service from that of others, and to consequently protect their reputation and goodwill.

Trademarks must have a distinguishing characteristic and not a descriptive one. The more a trademark resembles the associated good, the weaker it is. For instance, a trademark such as 'water' for mineral water will be too descriptive, while a pink elephant in relation to water may distinguish a bottle of water from others.

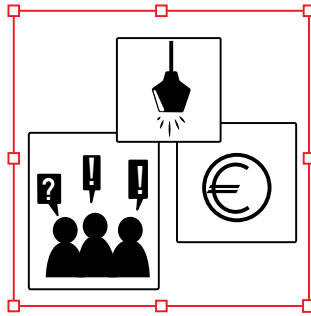
Trademarks need to be registered to enjoy full protection. Usually unregistered marks are also protected within the limits of "pre-use", but with significant variations depending on the jurisdiction. A registered trademark is valid for a period of 10 years (in case of a Community Registered Trademark) and can be renewed indefinitely as long as it maintains its distinguishing characteristics.

opendesigncontest.org

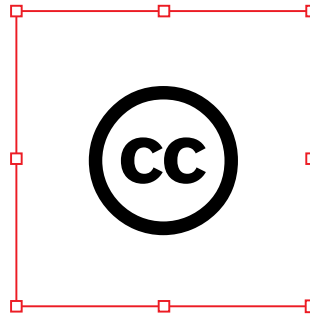
Case 1: Exposure by sharing



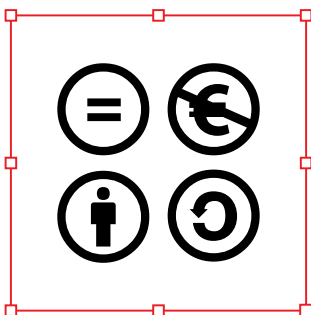
A young Dutch designer wants to get known for his work and make a living as a designer.



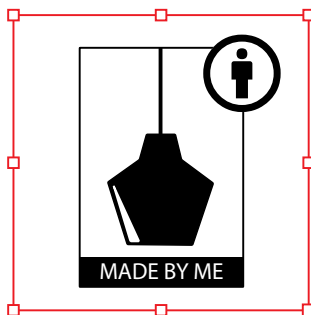
Sharing would be a good way to get known, but is sharing a good way to make a living?



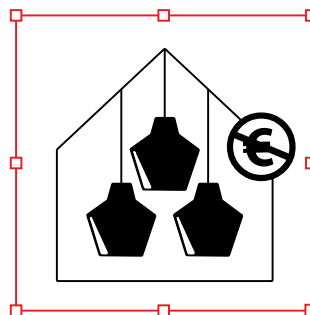
The designer can use a Creative Commons license to share and protect his work.



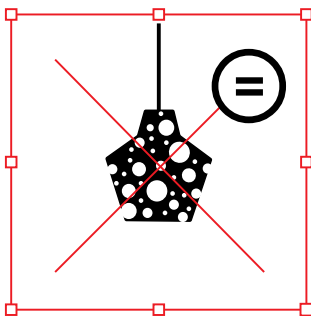
To choose the suitable license, the designer has to look at his motivations.



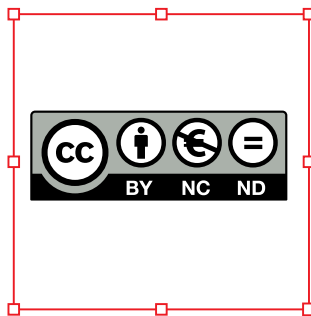
He wants to get known for his design, so attribution.



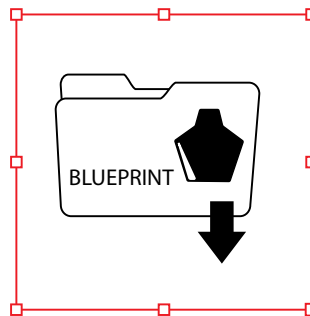
The designer wants to make a living. He doesn't want others to reproduce and sell his work without his permission.



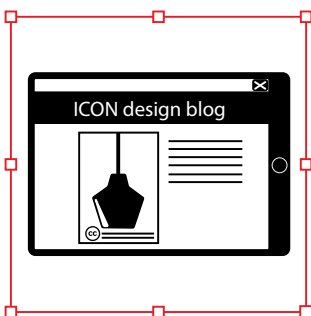
The designer wants to share only his design, so No Derivatives with his name on it.



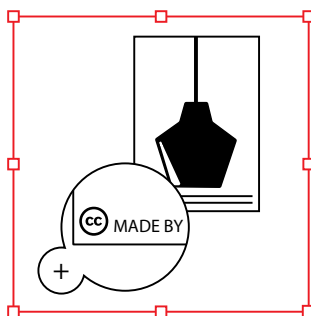
The Creative Commons license:
 BY = Attribution
 NC = Non-Commercial
 ND = No Derivatives



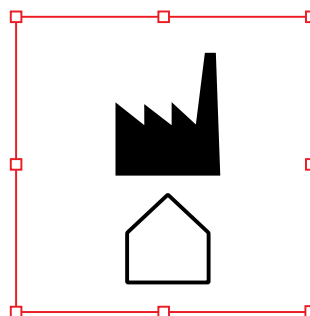
Now, people can download the designer's work for noncommercial use.



Other people can publish his work under a Creative Commons license.

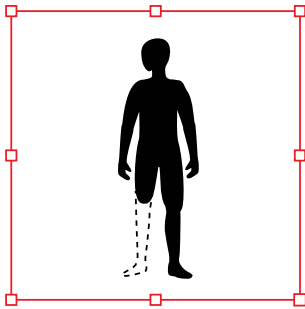


which gives credit to the designer, and makes it easier for people interested to contact him.

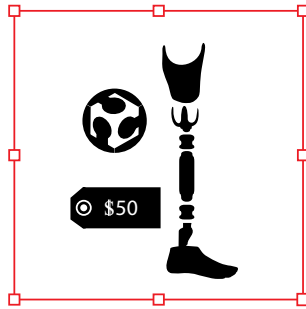


Like, for instance, people who want to manufacture or sell the designer's product.

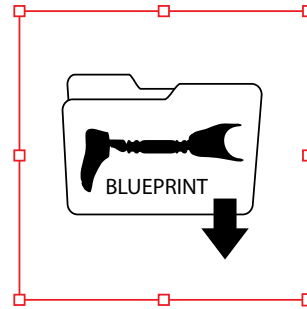
Case 2: Innovation by Collaboration



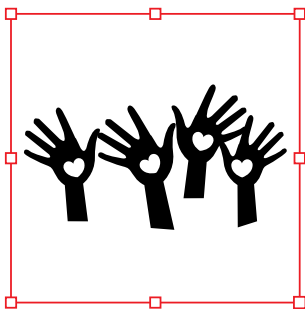
The Low Cost Prosthesis Project is a non-profit project that aims to develop a lower leg prosthesis.



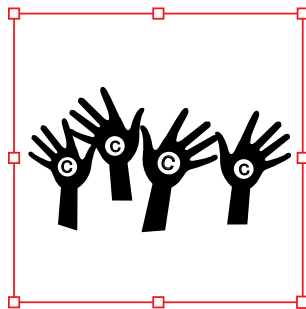
The Prosthesis can be made in any Fablab worldwide and costs less than 50 dollar.



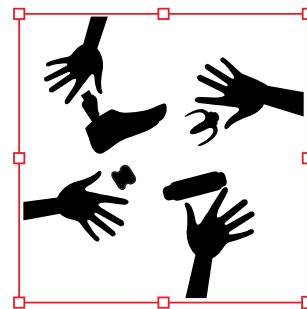
Once the design is finished, the blueprint will be downloadable from the project website.



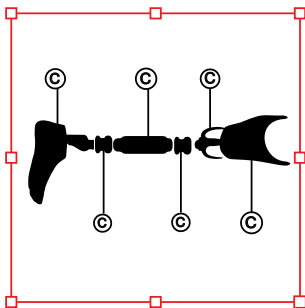
The project started out of passion and enthusiasm, and since the kick-off people have volunteered to work on it.



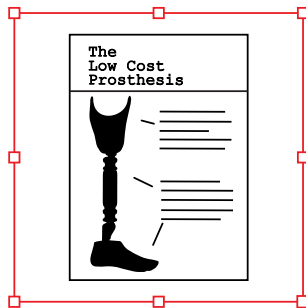
But how does this work from a legal perspective? Let's take a look at what we have:



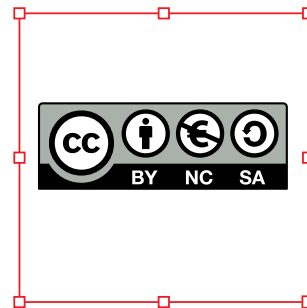
A voluntary project where individuals make a contribution. No contracts, no hiring, and no shared copyrights.



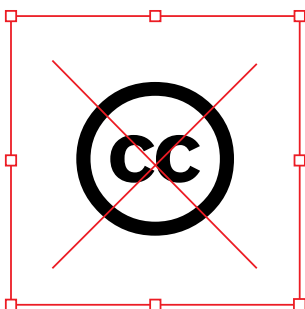
For the designers this means they remain copyright holder of the part that they designed.



And they can give the organization of the project permission to use the design.



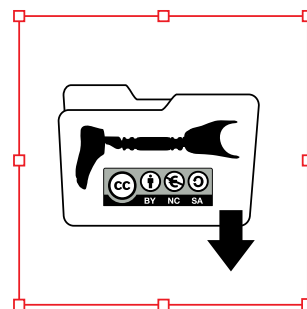
The organization of the project wants to share the blueprint under a Creative Commons BY-NC-SA license.



They cannot apply the CC license because the organization is not the holder of the copyright.

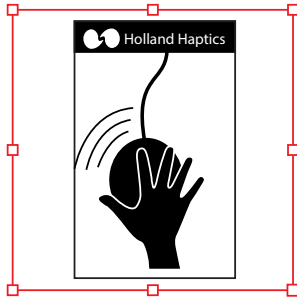


The easiest way to do so, is to have all the designers agree to a transfer of copyright to the organization.

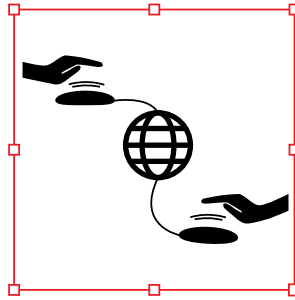


The organization of the project can now apply the Creative Commons license to all the files.

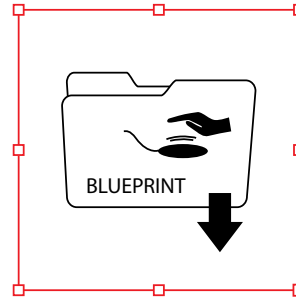
Case 3: Sharing to improve products



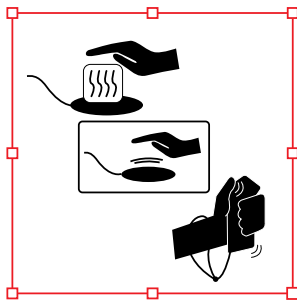
Holland Haptics is a small company that has developed a new computer accessory, the iCarezz.



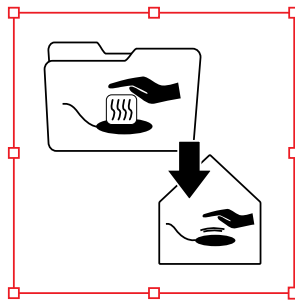
The iCarezz is a device that allows people to add a sense of touch to their online communication.



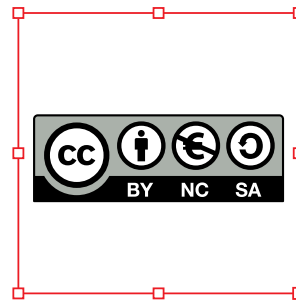
Holland Haptics believes that sharing their design files can help improve their product.



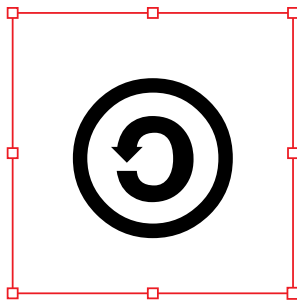
They want to invite people to play and tinker with the design, and come up with improvements.



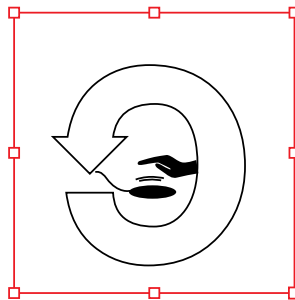
Holland Haptics would like to have the possibility to use the improvements of others for further product development.



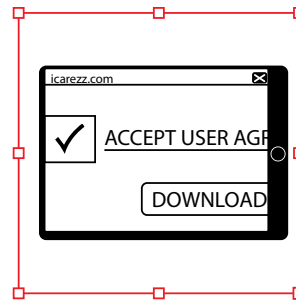
With a CC BY-NC-SA license people can change the design, cannot exploit it commercially, and have to share under the same terms.



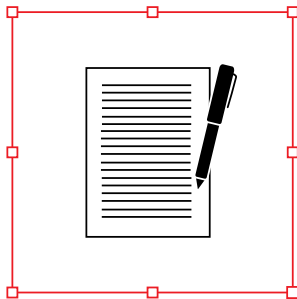
The 'Share Alike' protects Holland Haptics from the risk that someone shares a derivative under a different condition.



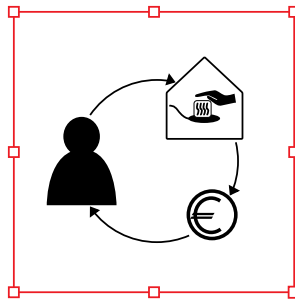
But is also implies that if Holland Haptics wants to use one of the modified designs, they are bound by the license and cannot exploit it commercially.



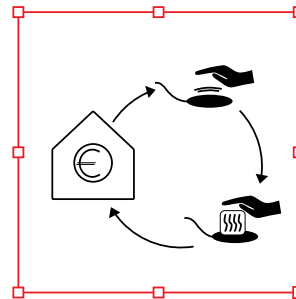
This can be circumvented by a user-agreement which states that Holland Haptics has the explicit license to the commercial rights of the derivatives.



There are a lot of different clauses and possibilities for a user agreement. For a designer, it would be interesting to make a derivative if the user agreement has some benefits for him as well, like a percentage of the profit made from/or based on his derivative.



This makes it interesting for designers to work on a derivative. People can download their work for non-commercial use, and if Holland Haptics wants to commercialize the derivative, the designer benefits from it.



For Holland Haptics it means that if a designer makes an interesting derivative, he cannot commercialize it with an other partner because Holland Haptics has the commercial rights.

OPEN Design Contest

The Open Design Contest is a global platform for local design contests, to make designers aware of Open Design. Labs around the world can organize a contest where designers can (re)design products, fabricate them and share them with others. Participants are stimulated to build further on entries from previous competitions, to improve the designs even better or to give an existing design a local 'flavor'. Designers are not only rewarded for fabricating a beautiful object, but also for the way they enable others to (re)make their object.

The contest is a great tool for labs to make people aware of the principles and strategies of open design. The global repository provides a large inspiration base of designs and blueprints, that people can (re)use to make an entry for the contest themselves. Local (physical) design sessions allow people to experiment through designing together, and to discuss the implications of open design. Of course every local lab has it's own perspective on open design, and it will be exciting to see the local differences.

opendesigncontest.org

The Open Design Contest was initiated by Waag Society, Premsula and Creative Commons Netherlands. The legal introduction was prepared by Sam Edens with the kind help of IViR, Institute for Information Law.

waag.org

premsela.org

creativecommons.nl



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second edition 2013

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