FREE CONTENT:
FREE SOFTWARE, OPEN SOURCE AND CREATIVE COMMONS

History, Philosophy and taxonomy of the „media revolution“

Gero Mudersbach
Andre Hoffmann

March 2008
Digital Media (M.Sc.)
University of Bremen, Germany

INHALTSVERZEICHNIS

»Free software« is a matter of liberty, not price. »Free« as in »free speech«, not as in »free beer«.

Richard Stallman

Show me why your regulation of culture is needed. Show me how it does good. And until you can show me both, keep your lawyers away.

Larry Lessig

Only wimps use tape backup: real men just upload their important stuff on ftp, and let the rest of the world mirror it.

Linus Torvalds

PART I: FREE SOFTWARE

Gero Mudersbach

The history of the GNU Manifesto and the GPL

The GNU Manifesto was written by Richard Stallman as a response to the change how access to software and how modifying of software was allowed by its copyright holders. Stallman was working in the Artificial Intelligence Lab at the Massachusetts Institute of Technology (MIT). One day the source code to the labs printer driver was not delivered with an update of the software. The ability to change the driver to the individual needs of the lab and its users was prevented by the new binary only distribution and the new license model of the printers manufacturer. For the time being a new computer was installed in the lab. That computer used a new – and proprietary – operating system. Stallman saw himself as well as his colleagues confronted to some sort of constraints in their work at the lab. They had to obey software licenses and were in some cases not able to adjust software to their needs. As a result – and that is the most important matter – they were not able to share modifications made to software – the software sharing community[1] was broken. This situation was unsustainable for Stallman, consequently he quit his job at the MIT and schemed a new set of computer software which should replace the now non-free operating system owned by AT&T (Unix). The GNU Manifesto claimed that proprietary software and its copyright takes away the freedom of the developers as well of the users. As a result the term free software was born that means free in the terms of freedom.[2]

> "In the 70s, computer users lost the freedoms to redistribute and change software because they didn't value their freedom. Computer users regained these freedoms in the 80s and 90s because a group of idealists, the GNU Project, believed that freedom is what makes a program better, and were willing to work for what we believed in."
>
> GNU and freedom (Stallman 2002)

In June 1988 the GNU General Public License (GPL) followed the ideas of the GNU Manifesto: the copyleft principle (reverse term of copyright).

---

[1] Stallman 1998

[2] Stallman 2002

"The copyleft used by the GNU project is made from a combination of a copyright notice and the GNU General Public License. The copyright notice is the usual kind. The General Public License is a copying license which basically says that you have the freedoms we want you to have and that you can't take these freedoms away from anyone else. (The actual document consists of several pages of rather complicated legalbol that our lawyer said we needed.) A copy of the complete license is included in all GNU source code distributions and many manuals, and we will send you a printed copy on request. "

First note on the GPL (GNU Bulletin, vol. 1/5)

The copyleft system implies that all modifications to a program or even extensions to a program have also to be free. There is a right to modify, redistribute and use of a program. Conversely today a modification to a DVD player software is illegal in most countries even without distribution of the modification. As of version 1 of the license (prior version had other names and needed to carry the programs name in it) it was possible to simple put a note in front of any source code that the terms of the GNU General Public License apply. If the program was not accompanied by the license text itself it was possible to get a printed version by writing to Stallmans newly created Free Software Foundation. In his Manifesto Stallman mentions five concrete reasons why users will benefit with the GPL system:

- there is a good and free operating system software
- no wasteful duplication of system programming
- complete sources available to everyone (changes can be made by everybody)
- more educational environment
- no struggle about ownership

Different versions and styles of the GPL

As said before the first significant change in the terms of the GPL took place with version 1. Soon (1991) GPL version 2 was published. This version should clarify some "misunderstandings and worries"[3]. Along with this new version of the GPL a new style – the GNU Library General Public License – was released. This new license (today also called Lesser General Public License or LGPL) allowed to link libraries that are not free to the libraries that used the LGPL. Libraries are small software programs that act as an interface to other programs or as small helpers (for example to help extracting text from a document). A minor update to the GPL lead to version 2.1 in 1999.

Fifteen years later there was a need to change the licensing terms again. In essence these changes include three topic areas:

First, software patents are addressed for the first time. In an interesting article called "Why upgrade to GPLv3" Stallman writes[4]:

"Microsoft made a few mistakes in the Novell-Microsoft deal, and GPLv3 is designed to turn them against Microsoft, extending that limited patent protection to the whole community. In order to take advantage of this, programs need to use GPLv3."

Stallman is referring to a contract between the software companies Microsoft and Novell which guarantees that they would not sue each other over patent violations. This agreement caused an outcry in the community of free software developers because it was an indirect acknowledgement from Novell to Microsoft that free software may violate some of Microsofts patents. Earlier, Novell began to move from proprietary software development to distribution and participation of free software by acquiring a few companies like Ximian and Suse, two Linux distributors. By the same token Microsoft claimed that the free software like GNU/Linux operating system was infringing over 200 patents of the software company. However, Microsoft has not named any specific patent yet that would be violated by any free software. Instead it supports other companies to sue firms using and distributing free software[5].

---

[3] FSF 1991

[4] Stallman 2007

[5] Groklaw 2007

The second major change that came with version 3 of the GPL was a clarification of the relationship of the GPL to digital rights management. In paragraph 3 of the GPL the authors are making it clear that the GPL is contradicting with digital rights management (DRM). Furthermore, paragraph 3 provides an automatic acceptance that it is allowed to circumvent a DRM system implemented in a GPLv3 software product.

Third, the GPL deals with the compatibility of other licenses, a topic that has been discussed very often referring to version 2 of the license[6]. There are several stumbling blocks that need attention, the most important three questions are:

- What does compatibility of two licenses mean?
- Is GPLv3 compatible with version 2?
- Is it possible to use GPL-incompatible libraries with GPL software?

If two or more licenses are compatible it means that each license has to permit the use "in the way" the other license(s) permit the use of the software. The question if GPL version 3 is compatible to version2 depends: if the programmer uses the term "licensed under GPL version 2 or later" then the software previously published under the terms of version 2 can now be published under GPL version 3.

The use of GPL-incompatible libraries is possible as long as the program does not need to distribute the library along (for example if it is a commonly used system library). There is a difference between the version 2 and version 3 of the library as the later does explicitly define what a "system library" is: a major component or a helper of a major component of a main part of the operating system.

[6] FSF 2007

Other open source licenses and how they differ from GPL

Open source licenses can be categorized into eight domains[7]. First, there are widely used licenses these include

- Apache License
- Berkeley software distribution license (BSD)
- General public license (GPL)
- Lirbrary general public license (LGPL)
- MIT License
- Mozilla public License (MPL)
- Common development and distribution license
- Common public license
- Eclipse public license

Second, there are special purpose licenses like the NASA open source agreement. Third, there are a few licenses that cannot be assigned to a domain. For example the Adaptive Public License that allows the initial project contributor to "adapt" the license according to the license template.

The third domain consists of licenses that are redundant with popular licenses like the open source license of the University of Illinois. This license is so similar to the popular licenses that it is needless.

The rest of the licenses are either non-reusable (like Apples Public Source License), superseded (like Mozilla Public License 1), retired (e.g. Intel Open Source License) or do not fit into the other categories (for instance the Boost Software License).

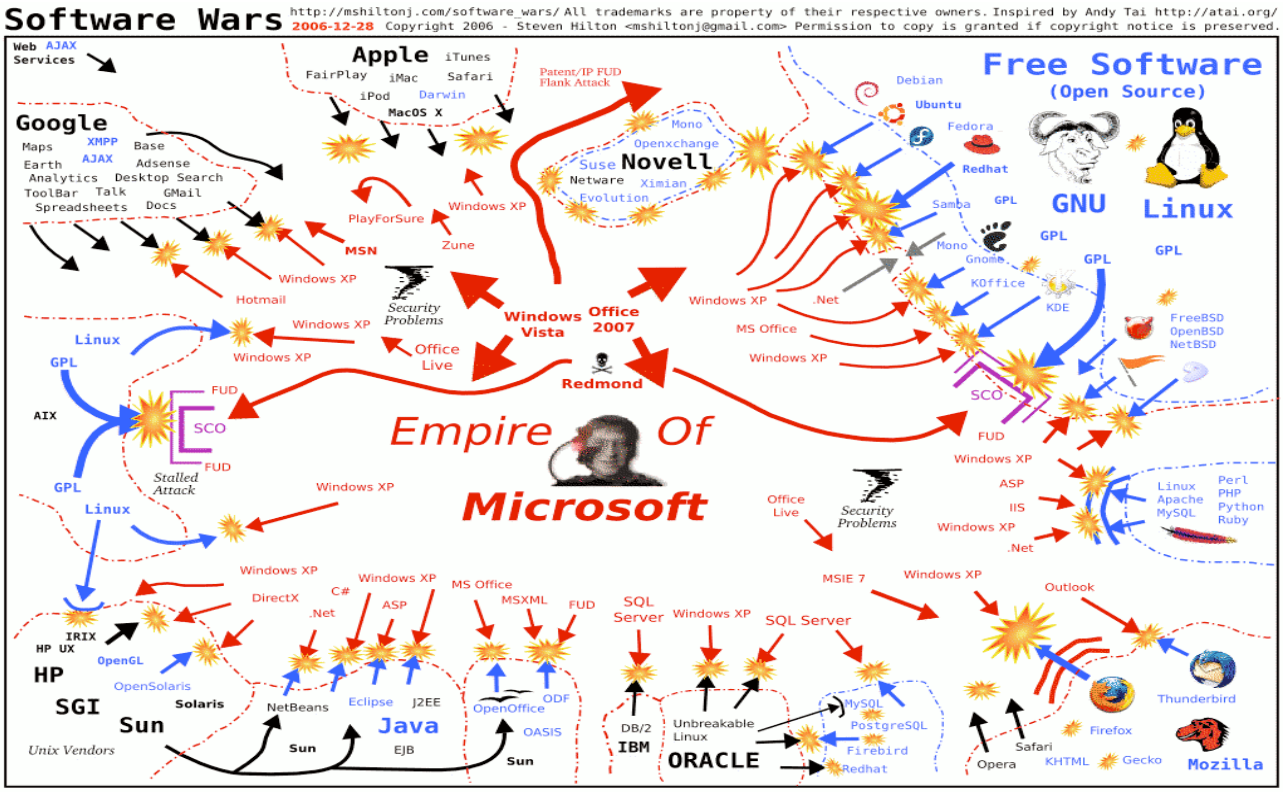
[7] According to OSI

According to OSI[8] all the above licenses meet the criteria of being an open source license, but the free software foundation has different criteria because for them open source does not mean that the software is free in the sense of freedom. These criteria include that a software may be studied, modified and used without restrictions (the only restriction is to keep the same terms with the distributed versions of a program).

These freedoms initially given to the users by the GNU Manifesto and the GPL had an impact on the software market as well as society.

Impact to the software market through the GPL

If we take a look into the history of software of the last twenty years then we can see a change in how software companies distribute and offer their software. These changes include the licensing terms, the methods of production and distribution and often a change in the whole philosophy of the companies. The reasons for the changes can be traced back not only to Richard Stallmans GNU Manifesto and the existence of the GPL itself but to one company: Microsoft. The market domination of that company forced its competitors to seek for new solutions against the power of the de facto monopolist.



[8] Open Source Initiative

Novell for example saw itself confronted with a decrease of its market share in the domain of directory services and networking collaboration software. The company changed its whole corporate philosophy from a proprietary software vendor to an open source and free software based Linux distributor. Similar Sun Microsystems went over to open its operating system Solaris and made it open source, as well as its Java technology that is now conveyed under the terms of the GPL. Earlier, Sun recognized that there was a need for an office system on other platforms than Windows and it was also required that there was a true alternative to the market domination of Microsoft. Sun decided to buy Staroffice from Stardivision, a german software vendor. After the transaction was complete, Sun made Staroffice available as OpenOffice.org, an open source version of the office suite.

Maybe the most popular example is Netscape and the Netscape browser that turned into the main competitor of the Internet Explorer as it merged over to Mozilla Firefox. Netscape at one time was the market leader in the browser market. But then Microsoft bundled its Internet Explorer with the Windows operating system and Netscape lost ground on the market. The lifesaver for Netscapes products was the migration to an open source company and so making the browser not only free of charge but also free for anyone to change. This helped porting the product to many operating systems as a benefit to the market share. As a consequence many other products emerged out of the Netscape source code, for example an email-client, a calendar and an application framework[9].

Another popular example is Apple Computers. Although Apple does not license its software under the terms of the GPL it uses the open source operating system BSD (do not confuse with the license that has the same name) as a basis of the operating system OS X. The behaviour change may not only be motivated by taking advantage of using existing technology.

However, these examples only cover half of the story since the companies mentioned above all merged from a proprietary software vendor to an open source software producer. We should not forget companies that used and conveyed free and open source software from the beginning. Namely there is the company Redhat. This company is a global player in the server market and after the acquisition of JBoss Red Hat plans to gain market dominance in the SOA[10] business.

---

[9] XUL

[10] Service oriented architecture

Impact of the GNU Manifesto on technology

Since the first free software their contributors had to struggle with being accused to use patented or copyrighted methods in their work[11]. Not only Microsoft claimed that free software would violate their patents, but the increasingly number of so called patent-trolls lead to unusual alliances between some software competitors. Because some companies feared that such patent suits would slow down the supply of services related to free and open source software they founded a company that has the purpose of holding the patents of the alliance members[12]. For this reason they not only ensure that they are not filing suits against each other but also ensure that the development of free software can go on without threat.

Accordingly, not only patented software but also the fact that it is closed software leads to another problem: interoperability. Interoperability means that developers have easy access to interfaces of software vendors and thus can make exchange of data between software and its devices easier. For example the closed and binary format of Microsoft Office documents lead to an overwhelming market share of programs such as Word and Excel. Long time it was not even possible to switch to another program because old documents could not be transferred to a new format. The same applies to the exchange of data between different operating systems. Many file systems were not compatible to each other, developing programs that convert the data from one format to another lead to copyright infringement[13] and the need to pay for license fees ($0.25 per unit or $250,000 per manufacturer). Such license agreements conflict with the free software idea and are impossible to comply with for developers of free software. In essence, when we see the big picture and look at the history of these problems we can legitimately ask:

Would the worldwide evolutionary progress of technology in terms of interoperability, connectivity, creativity and knowledge have been more advanced without proprietary software?

Ethical aspects of the GNU Manifesto

As we could read above there are three reasons of motivation to participate in collaborative communities:

---

[11] See AT&T, SCO, Novell, IBM cases

[12] Open Invention Network: IBM, Sony, Novell, Philips, RedHat

[13] Microsoft 2003

First, some people have a motivation that emerges out of themselves without external inducement like money. This is called an intrinsic motivation. According to Robles 80% of software engineers in the open source community are motivated intrinsictly[14]. Second, following up a greater good like helping the society improve something or because unhappiness with the commercialisation of the software system is another form of motivation, called altruism. Third, some people may hope for future returns. The last reason is that some people may just participate for personal needs or because of friendship among participants.

Nonetheless, these are all personal reasons. Furthermore it is also an ethical advantage to allow people to collaborate. The mutual destructiveness of restricting access to information to the society is unethic.

Although there is no ethical justification to sell knowledge[15] the patent and copyright systems are conductive to the procedure of selling knowledge and restrictive access to it.

"The idea that the proprietary-software social system—the system that says you are not allowed to share or change software—is antisocial, that it is unethical, that it is simply wrong, may come as a surprise to some readers. But what else could we say about a system based on dividing the public and keeping users helpless?"

Stallman 2002/2

The GNU Manifesto tries to break these systems and therefore help to create a new system where all people have access to the information they need, should it be just for developing something new out of prior achievements or for being able to survive at all. If somebody is forced to buy knowledge to cheat death, who would not say that this is not unethical?[16]

The GNU Manifesto and its impact to the society

The paradigm shift from a material intensive to knowledge economy17 can already be seen especially in conjunction with the software market. This change in economy has effects on society, too. The idea to form something new that is accessible to everyone and can be used free-

[14] Robles 2001

[15] Orsolic 2004

[16] WFP 2006

[17] Spitzlinger 2005

ly by everyone formed communities with many volunteers. The collaboration between these volunteers and companies that make money offering implementation of the knowledge gained from this cooperation leads to a new form of comprehension in business circles. Employees are not seen as a bulk of workers any more but as the potentiality to keep and increase the value of a company. Determinations that were made by managers solely based on financial aspects have to persist the democratic will of the communities.[18]

Nevertheless, the change from an exploitation from normal tangible goods to knowledge-based services harbours is a danger to the conveyment of expert knowledge. Increasing use of licensing models and patents leaves parts of our society behind. This is where the GNU Manifesto comes into play, which tries to achieve the prohibition of the scarcity of knowledge. These statements originally meant for software production can easily be extended to the whole information society:

Benefit to society[19]:

- People will no longer be at the mercy of one company which owns the information and is in sole position to batch the flow of knowledge.
- Schools and universities will be able to provide a much more educational environment by encouraging all students to study and improve existent knowledge or technology.
- Free access to information will result in a higher productivity of knowledge and therefore a decrease of social injustice.
- Finally, the overhead of considering who owns the information and what one is or is not entitled to do with it will be lifted.

As a consequence we can now ask:

Would our evolutionary progress in society related terms have been more advanced without restrictions to the flow of information?

By the same token Stallman had proposed this idea in his manifest:

---

[18] Novell 2005

[19] adopted from "Benefit to Computer Users", GNU Manifesto

"In the long run, making programs free is a step toward the post-scarcity world, where nobody will have to work very hard just to make a living. People will be free to devote themselves to activities that are fun, such as programming, after spending the necessary ten hours a week on required tasks such as legislation, family counseling, robot repair and asteroid prospecting. There will be no need to be able to make a living from programming."

Stallman 1985

An interesting approach as a middle course between the utopia (everything is freely available) and a tight affinity to copyright has been embarked by Lawrence Lessing and his team at the Stanford Law School: creative commons.

References

WFP 2006: http://www.wfp.org/policies/introduction/other/documents/pdf/World_Hunger_Series_2006_En.pdf

Orsolic 2004: http://www.dcc.ufla.br/-monserrat/download/FOSS.pdf

Robles 2001: http://web.archive.org/web/20030606050115/http://ig.cs.tu-berlin.de/s2001/ir2/ergebnisse/OSE-study.pdf

Microsoft 2003: http://web.archive.org/web/20031210120237/http://www.microsoft.com/mscorp/ip/tech/fat.asp

Stallman 1985: http://www.gnu.org/gnu/manifesto.html

Stallman 1998: http://www.gnu.org/gnu/thegnuproject.html

FSF 1991: GNU's Bulletin, vol. 1 no. 10, http://www.gnu.org/bulletins/bull10.html#SEC6

Stallman 2007: http://www.gnu.org/licenses/rms-why-gplv3.html

Groklaw 2007: http://www.groklaw.net/article.php?story=20071011205044141

Stallman 2002: http://www.gnu.org/philosophy/linux-gnu-freedom.html

Stallman 2002/2: http://www.gnu.org/philosophy/fsfs/rms-essays.pdf

FSF 2007: http://www.gnu.org/licenses/gpl-faq.html#WhatIsCompatible

Spitzlinger 2005: Utopie und Ethik einer freien Wissensgesellschaft, http://europa-mitte.pbwiki.com/f/Utopie und Ethik einer freine Wissensgesellschaft - Roland Spitzlinger.pdf

Novell 2005: http://www.novell.com/prblogs/?p=82

PART II: CREATIVE COMMONS

Andre Hoffmann

Introduction

In 2001, Lawrence Lessig, law professor at the Stanford Law School, and colleagues had the idea to create a service for content creators which is, unlike GNU licenses, not only applicable to Software and its documentation but also to works of media of any other, „classical" type, such as music, literature, movies, etc. Creative Commons' service aims explicitly for every person or organization no matter what grade of professionalism. Since December 2002[20], they deliver a system in which everyone can define the rules and regulations their type of content has to be distributed with. Since the rules were defined by lawyers, the Creative Commons are legally reliable. (see *Legal Situation*)

Creative Commons was founded as a non-profit organization to live up to the changes the last decades brought to the consumer and the content creator themselves. Lessig considers the 20th century to be an exception in the history of media culture. In this century, media organizations created a business model to protect content by laws to control the consume of media. This did not lead to serious problems of copyright infringement because the majority of the audience did not have the technology to rework or copy media in a more or less reasonable way. Lessig states that this is not applicable for the media culture of the 21st century. Since the 21st century brought major changes through the digital revolution through the internet and the personal computer allowed suitable, affordable and easy ways to remix, create and share personal media, the society changed from a „read-only" -culture to a „rewrite culture".[21] Lessig compares the recent situation with the practice of text citations. Basically, it is legally allowed to cite from any text without further permission. This was regulated that way to support the cultural and scientific development of a society.[22] To support this, societies enforced literacy since hundreds of years. Since the consume of media changed with the development of photography, moving picture and audio recording, everything commuted into digital media nowadays, Lessig points out to allow „citations" of this media in its primal form to make up to the freedom which exists in texts. It is not practicable anymore to regulate any kind of media production through complicated legal contracts, since „everyone" can create media through the digitalization. According to Lessig, video and audio is the media which creates the peoples imagination of the world. So it is important to spread the freedom of text to media of the digital world. Laws should not stop the consumerist to become a creator to express ideas, feelings

---

[20] http://wiki.creativecommons.org/History, ret. on 9.03.2008

[21] Interview with Lawrence Lessig, http://www.elektrischer-reporter.de/index.php/site/film/24/, ret. on 9.03.2008

[22] explanation in Germany, http://de.wikipedia.org/wiki/Zitat, ret. on 9.03.2008 or §63 deutsches UrhG

or opinions in the same media from what that input, the perceived „model of the world", originally came from.[23] Furthermore, restrictive copyright regulations criminalizes people because the regulations are so elaborate, that the ordinary consumer has no detailed idea of what he is allowed or prohibited to do.[24]

The Creative Commons organization tries to spread the awareness of the problems copyright may create in a digital world. They aim to engage a political debate and question the traditional ways of legal media distribution. From this perspective, Creative Commons is a lobby for the ordinary content creator without excluding professional content creators.

The Creative Commons System

Creative Commons provides a module system from which the content creator may choose different aspects he wants his work to be distributed with. The basic modules are:

Icon	Short	Name
	by	Attribution
	nc	Noncommercial
	nd	No derivative works
	sa	share alike
	sampling	sampling parts of work
	nations	for developing nations

Tab. 1: Creative Commons module icons

[23] see FN 21

[24] http://www.wired.com/wired/archive/6.03/netizen_pr.html, ret. on 9.03.2008

In most cases, using only one icon to describe the license of one's work is not sufficient or valid. The combination of the different modules will create a usable type of license. Currently, the license module system reached version 3.0. There are combinations from previous license versions which are still valid but should not be used for recently created content. In version 3.0 the Attribution module („by") became mandatory.

Licenses

by-nc-nd Attribution Non-commercial No Derivates

This is the most restrictive license. Work released under this license allows non-commercial redistribution. It is not allowed to change the work (no derivates). Because of this, the license is also called „free advertising" license.

by-nc-sa Attribution Non-commercial Share Alike

Others are allowed to use work licensed under this type for their own creativity. The newly created work must be released under identical terms. Attribution is mandatory, the work must be used only non-commerical.

by-nc Attribution Non-commercial

The difference to the previous license is, that others do not have to share their work under the same license.

by-nd Attribution No Derivatives

This allows the work to be used commercially and non-commercially as long as the work stays not manipulated and is credited to the original author.

by-sa Attribution Share Alike

Commercial use of the work is allowed as long as the author is credited and the work carries the same license.

by Attribution

The work can be freely handled as long as the authors name is mentioned.

Sampling Plus

The author is to be credited, derivative works are only allowed in form of sampling or a mashup. This does not apply to audio only.

NonCommercial Sampling Plus

This license allows the use of a work to the same conditions as above, but only in a non-commercial context.

by-nc-nd Music Sharing

Allows the sharing of a work under non-commercial and no-derivative terms. The author is to be credited.

Developing Nations License

Nations which are not classified as „high-income economies" are allowed to derivate the work, other nations are not allowed to do so. This license is not supported anymore.

Public Domain Dedication, GNU GPL, GNU LGPL

Creative Commons also delivers license types which are comparable to already evolved types of licenses. Those are Public Domain (see below), the GPL and the LGPL (see Part 1).

Every license comes with its own license texts. Creative Commons provides a so called common deed, which is easily comprehensible by any person. They also hand out a text called legal code. The legal code describes the correspondent license in a legally effective and very elaborate way.

Creative Commons also provides source code to integrate the various license types into websites, pdfs, etc.

Local Offices

To deliver a suitable service for worldwide jurisdictions many local offices of creative commons were founded. The licenses are basically the same, but the legal code and local demands were suited for the respective needs of the legal system. Offices run by voluntary workers from different backgrounds like social activism, law schools, etc. can be found in 44 nations.[25]

[25] for further information see http://creativecommons.org/international/

Open Content, Copyleft and Public Domain

Creative Commons is not the first initiative to introduce universal licenses for distributing media content in an alternative way. There are many other initiatives and forms of licenses, some practically ever coexisting with the classic copyright. Partly, they also overlap with certain creative commons licenses and ideas.

Public Domain

Depending on the legal system, in many nations there is the possibility to abstain ones rights after creating a work of media, art, etc. One can explicitly disclaim his legally rights to let others use that work for every purpose. Public domain is a notion in the US jurisdiction and is not necessarily applicable to other legal systems. In Germany, the content creator cannot disclaim his rights completely in the sense of the US system. An exception here is official content which has none or only minimal copyright from the beginning. Copyrighted works exceed the border to the public domain typically after decades after the creators death.[26]

Copyleft

Fig 1: the coplyleft Logo

While Public Domain seeks for the complete separation between the creator and the content, copyleft still relies on the creators rights – who explicitly disclaims all those rights. This would apply to the so-called „strong" copyleft. The difference is that the creator usually forces others to release their work under the same copyleft, while a „weak" copyleft license leaves derivatives total freedom.

Many other license-types are based on the Copyleft idea, such as the GNU GPL, LGPL, GFDL and the Open Audio License (OAL) from the Electronic Frontier Foundation as well. Others try to create a applicable license type based on Copyleft such as the Design Science License or the Creative Commons by-sa license.

---

[26] An interesting note here is that in 1998 the extension of the validity of copyright in the USA was extended by 20 years, as stated in the Copyright Term Extension Act (CTEA), alternatively known as the Sonny Bono Copyright Term Extension Act, honorably named after the musician who later became a politician and died before the act was adopted. One lawyer fighting against this act was Creative Commons founder Larry Lessig.

Open/Free Content

The concept of Open Content was created by the Open Content Initiative, started by David Wiley, in 1998. The Open Content Initiative developed two licenses, the Open Content License, a non-commercial license, and the Open Publication License, latter discontinued.

The terminology allows the classification for Free Software to be a part of Open Content. Actually, the term Open Content derived from the term Open Source. The term free content is also comparable to the, then, successful Free Software licenses. Free content itself is not directly connected to the Open Content Initiative though one can classify open content and creative commons, free software, etc. as a representative of free content, not explicitly specifying which type of content it is about.

Legal Situation

Every legal code of any creative commons license starts with the note:

„CREATIVE COMMONS CORPORATION IS NOT A LAW FIRM AND DOES NOT PROVIDE LEGAL SERVICES. DISTRIBUTION OF THIS LICENSE DOES NOT CREATE AN ATTORNEY-CLIENT RELATIONSHIP. CREATIVE COMMONS PROVIDES THIS INFORMATION ON AN "AS-IS" BASIS. CREATIVE COMMONS MAKES NO WARRANTIES REGARDING THE INFORMATION PROVIDED, AND DISCLAIMS LIABILITY FOR DAMAGES RESULTING FROM ITS USE.“

Though this practice may be rather ordinary, this statement may describe the circumstances in which licenses like Creative Commons find themselves in. From the legally point of view, free content licenses are still based on copyright (exception: public domain). Because the creator of a work has full rights he may still decide to release his content under certain circumstances, reaching up to full abandonment of copyrights, practically a negation of the copyright.

Since alternative license types are usually not anchored in jurisdictions they build upon the legal situation. Everyday approval came with various lawsuits which tightened the role of free content licenses in the particular jurisdiction.

Though this work is not made by lawyers, the author is not able to give further legal insight. Only a few precedences will be highlighted in the following part.

Fig. 2: Creative Commons disclaimer on a bar door in Spain[27]

Lawsuits

The spanish collecting society Sociedad General de Autores y Editores (SGAE) sued a bar owner for not paying the general fees to the society. Because that owner only played music from artists which released their work under a creative commons license he did not pay any fees to the society. Since most of the european collecting societies do not permit their artists to release their work under a creative commons license, the artists which were played could not be members of the SGAE. The court decided that the bar owner was in right to not pay any fees. This decision showed that the legal effectiveness of the Creative Commons in Spain and that artists really can choose freely between different forms of distribution.[28]

Another lawsuit in the Netherlands confirmed the effectiveness of the Creative Commons licenses. The former MTV anchorman and one of the inventor of the podcast, Adam Curry, sued the magazine „Weekend". The editorial staff used pictures from the photo community Flickr which were released under the Creative Commons license by-nc-sa, basically not allowing to use the work for commercial purposes. Since the purpose was clearly commercial, a Dutch court decided to prohibit every further use of the pictures under a fine of 1 000 € per picture. Although this was a rather mild penalty, Adam Curry stated that the Creative Commons Copyright stays effective.[29]

A Texas family sued the Creative Commons organization and Virgin Mobile because latter used a picture from a member of that family, released under a commercial Creative Commons license on Flickr, for an advertisement. The suitors accused Creative Commons of failing to „adequately educate and warn the photographer of the meaning of commercial use and the

---

[27] http://de.wikipedia.org/wiki/Bild:Creativecommons_spanien.jpg, ret. on 9.03.2008

[28] http://www.fspa.de/2006/cc-lizenzen-erneut-vor-gericht-bestatigt-diesmal-in-spanien/, ret. on 9.03.2008

[29] http://curry.podshow.com/?p=49, ret. on 9.03.2008

ramifications and effects of entering into a license allowing such use."[30] Although the family dropped the lawsuit, Larry Lessig stated in a blog post that he regrets the misunderstanding and that his organization has to work harder on their aim to make the licenses more clear.[31]

Development and examples of use

By the beginning of March, 2008, there were 143 Million search results on Google for the term „Creative Commons". According to a letter of Larry Lessig from October 8th, 2006, the numbers of link-backs to the licenses grew rapidly over the last years since founding.[32] Starting with 1,000,000 link-backs after the period of one year, it multiplied by 12 to 12,000,000, then rising to 45,000,000 in the next year and reaching 140,000,000 link-backs by Mid-2006. (see Fig.3)

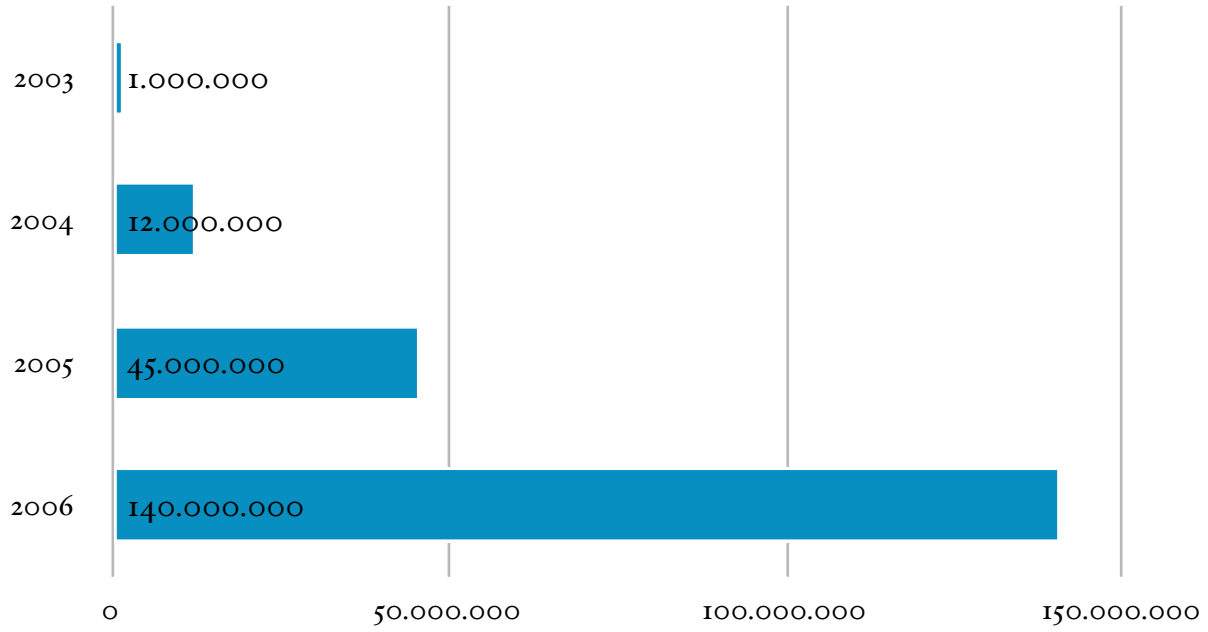


Fig.3: link-back development for creativecommons.org

What do these numbers say about the acceptance of Creative Commons in the society? There are roundabout 140,000,000 uses of a Creative Commons license online (possibly not covering some offline-only works). 140 Million is a large number, but since there are no numbers of the media produced over the world (or at least that part, which has a local Creative Commons office), those numbers are not objective.

---

[30] http://www.itworld.com/Man/2681/071129creativecommons/, ret. on 9.03.2008

[31] http://lessig.org/blog/2007/11/from_the_whyagcfromcravathisgr.html, ret. on 9.03.2008

[32] http://creativecommons.org/weblog/entry/6106, ret. on 9.03.2008

It is still possible to measure the social impact to a certain degree while looking at other figures. That means looking at people and organizations who support Creative Commons in one or the other way.

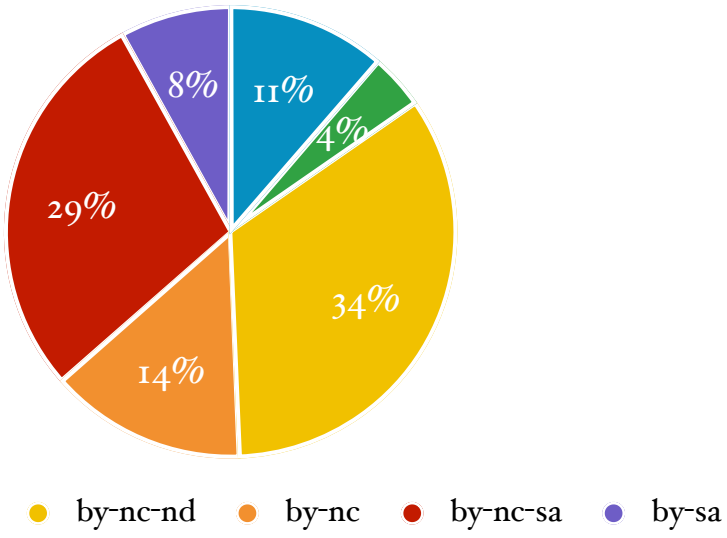
It is interesting, what donators have given funds to Creative Commons (once again: Creative Commons is a non-profit organization). On the supporters webpage one may find Microsoft, Cisco, IBM, Yahoo, Facebook, Sun and others as Higher Level Sponsors. That may imply that even capitalistic-driven companies see some sort of benefit in those licenses (or: hope for a certain lobbyist influence, PR advantages, ...).

The Creative Commons webpage of Content Curators lists 278 projects, amongst these are YouTube (though there still is no option to share a Video under a Creative Commons license), archive.org, a lot of educational facilities worldwide, Wikimedia Commons, TED and flickr.com.

Flickr as a case study for Creative Commons

Yahoo supports Creative Commons not only with funds but also with a wide user base who may release their content under a Creative Commons license. The photo community Flickr, an acquisition of Yahoo, gives his users the possibility to distribute their photos under a Creative Commons license. And that may explain why the number of link-backs is so high: since every photograph is a distinct work, every photo comes with its own license. Fortunately, Flickr provides exact numbers of how many photos were released under a Creative Commons license and if so, under which license. Currently, there are 61,864,470 Photos released under a Creative Commons license.[33] That means, about 44% of any Creative Commons license is applied to a certain photograph on Flickr. It is interesting in particular, what type of licenses where chosen:

Fig. 4: Creative Commons license distribution on flickr.com



[33] http://www.flickr.com/creativecommons/, ret. on 9.08.2008, 12:15 CET, numbers changing rapidly

The Attribution non-commercial no derivate license is the most popular, followed by the Attribution non-commercial share-alike license. The majority of 77 % of all used Creative Commons licenses are released under a non-commercial one while only 23% allow commercial use. 62% allow derivative work, 38% do not want their content to be changed.

More Showcases

Although the following cases only represent a small part of those 140 Mio used licenses, they may serve well as a showcase for the usage of Creative Commons licenses.

After the British band Radiohead had a very successful[34] online and label-less release of their Album „In Rainbows", the US Band Nine Inch Nails announced to release their album independently from a label and over the Internet as well. The album is licensed with a Attribution non-commercial share-alike license. What is interesting behind choosing a Creative Commons license is, that the Album is completely released under that license but is only in parts freely available on their Website[35]. The whole Album will be sold for 5 $ – meaning that Content licensed with Creative Commons do not has to be necessarily free. Obviously, it is then possible to get the whole album legally for free from anyone who already bought it. The 5 $ charge could rather be seen as a donation.

The scientific magazine Nature announced in December 2007 to release every article which addressed scientific issues around the human genome under a Creative Commons non-commercial license.[36]

The German TV magazines Zapp and Extra 3, an investigative media-magazine and a satire show, broadcasted by the NDR in Germany, decided in December 2007 to share their program online under a Creative Commons Attribution non-commercial license no derivates license.[37] This is in particular interesting because the work produced by the NDR (and every other broadcaster under public law) is solely financed by the public. This brings up the question, if any work of those broadcasters should be released under such a license to allow viewers to „cite" their work for any purpose on their own website or within their own content.

The Wikipedia is very likely to give authors the freedom to choose between the currently used GNU Free Documentation License (GFDL) and a Creative Commons Attribution share-alike license. Wikipedia founder Jimmy Wales stated in December 2007, that he had chosen Crea-

---

[34] http://www.intro.de/magazin/musik/23046358, ret. on 9.03.2008

[35] http://ghosts.nin.com/, ret. on 9.03.2008

[36] http://www.heise.de/newsticker/meldung/100644/, ret. on 9.03.2008

[37] http://www.heise.de/newsticker/meldung/99279, ret. on 9.03.2008

tive Commons in the first place if it had been available at the beginning of the Wikipedia, because the GFDL is quite complicated and not very easy to use.[38]

Reasons to choose a Free Content license

There are various and very varying reasons for deciding to choose a free content license. Those reasons may be sorted into one (or more) of the following categories:

- ethical issues: the creator feels obligated to share the work, because of ethical reasons (for instance the human genome)
- moral issues: socially implicated obligations, i.e. working against mechanisms the classical copyright creates
- altruistic issues: the creator hopes that other persons will benefit from his work
- political issues: the creator wants to overcome political boundaries to support nations which suffer from political instability or do not have any possibility to obtain certain informations, knowledge and media from abroad because of monetary issues
- synergy issues: the creator hopes for an improvement of his work when everyone may contribute and integrates own ideas
- publicity issues: the creator hopes for a fast spread of his work to become famous or creating other publicity side-effects (also of a monetary nature)
- zeitgeist issues: it is en-vogue to publish the work under a free license
- license issues: the creator must release his work because it derived from a work which was released under a share-alike license or any similar license, which binds the creator to release his work under the same license as the original
- casual issues: the creator does not think that his work is worth any copy control and wants to express that by using a free content license or remains anonymous (this can be the case in the USA, not so likely in Germany[39])

[38] http://www.heise.de/newsticker/meldung/99887/, ret. on 9.03.2008

[39] §66 deutsches UrhG

Critique

General Criticism

The free content community faced itself with the accusation of being communists. This seems to be a typical criticism[40], the free content community tries to clarify that this is not the case, claiming that intellectual property is different from material property from a economical point of view.[41]

It seems idiosyncratic for the accusants to drop such claims. Linux was accused from Microsoft of inhabiting communistic approaches, Larry Lessig stated that he was called a communist.[42] Such claims come from organizations which represent the „old" System, namely Microsoft as a contestant of the GNU/Linux project and the collecting societies as the old way to distribute content.

Collecting societies see Lessig as „the embodiment of all evil, a friendly Pied Piper, who guides content creators away from the collecting societies and abducts those into another legal system." He perforates the protection a collecting society offers their members. Lessig replied to them, that he is not the enemy of the content industry, Creative Commons is meant to be as an alternative, not a replacement for copyright. Due to his opinion, every content creator should have the possibility to have full control over the use of his rights, which implies to disclaim those rights. Furthermore, Lessig stressed once again that he is against piracy.[43]

Structural Criticism

There has been some criticism in the structure and organization of the Creative Commons. Those are:[44]

- the short version of the deed is not sufficient for laymen. To fully understand the legal situation it is necessary to read further information (i.e. the legal code), which is too much for most people

---

[40] see FN21 and http://www.dignatz.de/d/spotlight/artikel/ms_campaign_linux-mag_20010312_001.html, ret. on 9.03.2008

[41] see http://archives.cnn.com/2000/TECH/computing/02/11/free.software.idg/, or http://wiki.creativecommons.org/FAQ, ret. on 9.03.2008

[42] see FN39

[43] c't Magazin, issue 13/07, p.34

[44] taken from: http://de.wikipedia.org/wiki/Creative_Commons, ret. on 9.03.2008

- Creative Commons licenses lack the compatibility to other copyleft licenses (though this just as well a problem for the other licenses). One cannot combine work released under a Creative Commons share-alike license with, for instance, work which was released under GNU GPL, because share-alike respectively copyleft implies to use the exact same license for derivative works – meaning one cannot use either one of the referring licenses or both in combination.
- a common problem is the use of different licenses in Creative Commons in one product, if one part allows commercial use and another one is non-commercial.
- in a certain jurisdiction there already may be rights to use non-Creative Common music in motion pictures, a Creative Common no-derivatives license excludes this right explicitly
- Richard Stallman criticized that there were licenses which prohibited a non-commercial distribution (Sampling and Developing Nations), which was not in the sense of Free Content. Creative Commons discontinued those licenses after that incident.

Vista

Creative Commons celebrated its fifth birthday in December 2007. Thousands of people celebrated to this occasion at worldwide parties in Bangalore, Belgrade, Berlin, Los Angeles New York, Manila or San Francisco. Larry Lessig announced several projects regarding Creative Commons: CC+, a system which allows to get rights beyond those provided in a Creative Commons license, will be used by Yahoo to tag content with. Further organizations announced their support.[45] The new CC0 is the Creative Commons version of public domain.

The number of link-backs and the use of Creative Commons licenses in general indicate a wide acceptance of those licenses. Certain lawsuits show that there are still misunderstandings in the use of the licenses. Also the incompatibility of certain licenses among each other creates more harm than actual use. Creative Commons still has to improve on these critique points.

Larry Lessig personal mission was to recreate the media culture and obviously this task is not fully accomplished yet. He still gives Talks, a highlight was his TED talk last year, called „How creativity is being strangled by the law".[46] He calls the music industry, one of the most reactive

[45] http://lessig.org/blog/2007/12/on_what_exactly_happened_satur.html, ret. on 9.03.2008

[46] http://www.ted.com/talks/view/id/187

victims of the digital media revolution, to change their business model into a more open one and accuses them to be liable for the P2P catastrophe.[47]

After all, Larry Lessig wrote on June 19, 2007, that his working field will constantly change in the next 10 years into more to a political field, still remaining in the Creative Commons organizations. He wants to learn more about different aspects of his main ideas to fulfill his dream of a free culture, „free of the corruption" as he stated.[48]

Creative Commons had a huge impact, and with free content icons like Larry Lessig the impact may reach the „common people" at last.

[47] http://www.heise.de/newsticker/meldung/102508/, ret on 9.03.2008

[48] http://lessig.org/blog/2007/06/required_reading_the_next_10_y_1.html, ret. on 9.03.2008