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Copyright in the Digital Age

Seminar work

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Introduction

The institute of copyright appeared long time ago. The scholars of Ancient Greece and the Roman Empire were the first to be concerned about being recognised as the authors of their works, but they did not have any economic rights. It was not until the invention of printing in the 15th century that a form of copyright protection came about. Until then, the copying of a manuscript was a painstakingly slow process done mainly by monks and was limited to copying religious works for orders and the royal courts of Europe. The majority of people were illiterate and only privileged members of society had access to these manuscripts. [1]

Since its inception, copyright law has responded to technological change. Today, the changes that are grabbing all the headlines relate to digital technology and digital communications networks, such as the Internet and personal computers. The computer revolution has altered the practical landscape of copyright protection. The digitization of copyrighted works, including text, music, and video, has dramatically increased the efficiency of unauthorized copying. Infringers can produce thousands of perfect copies of copyrighted works at little cost. The emergence and rapid proliferation of the Internet has compounded the problem immensely. The Internet allows copyrighted material to be distributed instantaneously and globally, again at nominal cost.

Copyright owners have attempted to combat these threats in numerous ways. They have sued the providers and users of online file-sharing networks. They have developed technological barriers to unauthorized copying. And they have lobbied governments to strengthen legal protections. As part of the latter strategy, copyright owners have pressed legislatures to adopt more comprehensive and punitive criminal sanctions for infringement. They have also encouraged police and prosecutors to use criminal copyright law more liberally. [2]

As a result, over the past few decades, copyright has been twisted by powerful interests to mean the protection of media industry business models, which are now treated like a sacred, inviolable trust. Due to obsessive fixation by a handful of powerful media industries on the issue of piracy, the massive potential of networked digital culture that has briefly flowered in the past decade could be destroyed by draconian laws and code controls embedded in new technologies. [3]

The purposes of this paper are:

1. To provide brief information about the history of copyright
2. To outline the main principles of copyright
3. To explore the challenges of copyright in the digital era and
4. To find answers to the following questions: “What is wrong with current copyright law?” and
   “Is current law not up to the task of managing intellectual property rights in the digital age?”
1. Copyright

1.1. A brief history of copyright

With the invention of the printing press the idea of copyright was also born. In the beginning it were the printers and publishers who petitioned the authorities to protect them from unfair competition from printers who simply copied their publications. The first right had been granted by the authorities to printers and publishers in the beginning of the 15th century and it soon emerged that these privileges not only encouraged a new industry by making the printers’ trade more lucrative, but were also an ideal means of controlling access to information by restricting the rights to legal protection. So until the enlightenment a preliminary function of these privileges was effectively censorship. [4]

The world’s first copyright law was the Statute of Anne, enacted in England in 1710. This Act introduced for the first time the concept of the author of a work being the owner of its copyright, and laid out fixed terms of protection. Following this Act, copyrighted works were required to be deposited at specific copyright libraries, and registered at Stationers’ Hall. There was no automatic copyright protection for unpublished works.

Legislation based on the Statute of Anne gradually appeared in other countries, such as the Copyright Act of 1790 in the United States, but copyright legislation remained uncoordinated at an international level until the 19th century. In 1886, however, the Berne Convention was introduced to provide mutual recognition of copyright between nation states, and to promote the development of international standards for copyright protection. The Berne Convention does away with the need to register works separately in each individual country, and has been adopted by almost all the nations of the world (over 140 of the approximately 190 nation states of the world). Following the United States’ adoption of the treaty in 1988 the Convention now covers almost all major countries. The Berne Convention remains in force to this day, and continues to provide the basis for international copyright law.

One of the biggest changes implemented by the adoption of the Berne Convention was to extend copyright protection to unpublished works, and remove the requirement for registration. In countries of the Berne Convention this means that an individual (or the organization they are working for) owns the copyright of any work they produce as soon as it is recorded in some way, be it by writing it down, drawing, filming, etc.
While the adoption of the Berne Convention has had many benefits for the creators of original works, the systems for protecting unpublished works remain fragmented internationally, with some states offering optional registration services within their own jurisdiction, while others offer no kind of registration at all. Without registration, it can be difficult to judge who is the rightful owner of a copyrighted work. The national registration systems may not be willing to offer support in a dispute in another country. The Intellectual Property Rights Office (also known as the IP Rights Office and the IPRO) was created in an effort to create a central international point of deposit for unpublished works from around the world, via its Copyright Registration Service. The hope is that this can provide a standard point of registration for all citizens of Berne Convention nations. [5] (See also appendix 1)

1.2. What is copyright?
Copyright, as its name implies, involves the right to copy items. There are two major criteria for something to be copyright:

1. The work must be original. In most countries this requirement means that the material must not have been copied from someone else.
2. Work must be fixed in a tangible medium, i.e. an idea must be given a physical form (a piece of writing, a photograph, music, a film, a web page, a computer program). [6], [7]

Copyright protection extends only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such.

1.3. What can be copyrighted?
- Literary works (books, periodicals, manuscripts, web page, email, discussion lists, web blogs)
- Musical works (songs, operas, musical plays)
- Dramatic works
- Pantomimes and choreographic works (dances)
- Pictorials, graphics, sculptures
- Motion pictures, audio- visuals, multimedia works
- Architectural works
- Computer programs and their documentation [8]

1.4. What cannot be copyrighted?
- Works in the "Public Domain" i.e., copyright has expired
- Ideas, concepts (copyright protects the way the idea is expressed NOT the idea itself)
- Pure, raw facts; processes; equations; principles
- Names, titles, slogans (if these are not Trademarks)
- Blank forms; standard materials like calendars, charts
- Extemporaneous speech (which is not recorded or based on detailed notes)
- Standard plots
- Characters [8]

1.5. Ownership of copyright
The copyright in the work of authorship immediately becomes the property of the author who created the work. If the work is created in the course of a person's employment, then the copyright holder is usually the employer. [9], [10]

Copyright is a property right and can be sold or transferred to others. Authors of articles in academic journals, for example, frequently transfer the copyright in those articles to the journal's publisher.

1.6. Copyright registration
The way in which copyright protection is secured is frequently misunderstood. Copyright is secured automatically when the work is created, and a work is "created" when it is fixed in a tangible form, such as the first time it is written or recorded. Neither publication, registration or other action is required to secure copyright, although registration is recommended.

1.7. The notice for visually perceptible copies
The notice for visually perceptible copies should contain all the following three elements:

1. The symbol © (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr."
2. The year of first publication of the work.
3. The name of the owner of copyright in the work.


1.8. Exclusive rights
A copyright owner has five exclusive rights in the copyrighted work:
1. Reproduction Right. The reproduction right is the right to copy, duplicate, transcribe, or imitate the work in fixed form.

2. Modification Right. The modification right (also known as the derivative works right) is the right to modify the work to create a new work. A new work that is based on a preexisting work is known as a "derivative work."

3. Distribution Right. The distribution right is the right to distribute copies of the work to the public by sale, rental, lease, or lending.

4. Public Performance Right. The public performance right is the right to recite, play, dance, act, or show the work at public place or to transmit it to the public. In the case of a motion picture or other audiovisual work, showing the work's images in sequence is considered "performance."

5. Public Display Right. The public display right is the right to show a copy of the work directly or by means of a film, slide, or television image at a public place or to transmit it to the public. In the case of a motion picture or other audiovisual work, showing the work's images out of sequence is considered "display." [12]

They also have the right to prevent:

- others communicating a work to the public by electronic transmission, e.g. broadcasting it or putting it on a website,
- others making available to the public a recording of a performance by electronic transmission, e.g. putting it on a website.

Copyright holder(s) may grant permission or license anyone else to do these things, without affecting their ownership of the actual copyright in their work, e.g. an author may permit a television adaptation of their book to be made and broadcast - the copyright in the original book remains with the author and they may grant other such rights to other people. [13]

1.9. Fair use

The concept of fair use can be confusing and difficult to apply to particular uses of copyright protected material. Understanding the concept of fair use and when it applies may help ensure your compliance with copyright law.

Fair use is a uniquely U.S. concept, created by judges and enshrined in the law. Fair use recognizes that certain types of use of other people's copyright protected works do not require the copyright
holder’s authorization. In these instances, it is presumed the use is minimal enough that it does not interfere with the copyright holder’s exclusive rights to reproduce and otherwise reuse the work. Fair use is primarily designed to allow the use of the copyright protected work for commentary, parody, news reporting, research and education. However, fair use is not an exception to copyright compliance so much as it is a "legal defense." That is, if you use a copyright protected work and the copyright owner claims copyright infringement, you may be able to assert a defense of fair use, which you would then have to prove. [11]

1.10. For how long does copyright last?
This will depend on the work and nationality. The term of protection or duration of copyright varies depending on the type of copyright work. There may also be variations in the term where a work was created before 1 January 1996. [9] (See also appendix 2)


2. Software and Copyright

In the 1970s and 1980s, there were extensive discussions on whether the patent system, the copyright system, or a sui generis system should provide protection for computer software. These discussions resulted in the generally accepted principle that computer programs should be protected by copyright, whereas apparatus using computer software or software-related inventions should be protected by patent. [14]

All software has one or more authors who assert the right to their intellectual property in the software that they have written. Copyright applies therefore to all all software whether or not you have paid money for it and the distribution and use of software is subject to a 'licence' which specifies the terms of use. The conditions that apply to a particular piece of software depend on a number of things, but in general there are two main types of software: proprietary software and Free and Open-Source Software (FOSS).

2.1. Proprietary software

2.1.1. Software sold as a product

In this case you pay a fee for the software and the licence allows you to use it for as long as you like on one machine and to make copies only for the purpose of backup if something goes wrong with your machine. If you change your machine, you may transfer the software to your new one, but you MUST delete it from the old one before passing it on to someone else. In some cases a licence may permit use on more than one machine, but this is ALWAYS EXPLICIT in the licence terms.

2.1.2. Software for rent

This is similar to the software sold as a product, but you have to pay a fee each year for continued use and in most cases the software stops working unless the fee is paid and a new 'licence key' is issued by the supplier. Annual rental often applies to site licences (where once the fee is paid, the organisation may use the software on as many machines as it likes) and to software on mainframe or server computers. Again the licence terms will be EXPLICIT as to what use is allowed.

NOTE: In neither of the above cases are you permitted to attempt to modify or reverse engineer the software or remove any copyright messages, etc. [15]
2.1.3. Shareware

Shareware is a different concept. You can download and try shareware for free (typically for 15 or 30 days), but if you use it, you are supposed to pay for it. It is developed and released by someone who keeps full control of the intellectual property. The user does not have access to the source code and cannot modify it. There is also no collaboration or community around shareware.

In the end, the only difference between shareware and commercial software is that you can download and try shareware for free. Like commercial software, you are ultimately dependent on the developer of shareware for enhancements and support.

Thus, shareware is "free" as in "Free Sample" at restaurants or grocery stores.

2.1.4. Freeware

Freeware is a software which can be downloaded, used, and copied without restrictions.

Legally, the difference between freeware and open source is that you do not have access to the source code. Organizationally, this makes a big difference: There is no community and no development infrastructure around "freeware" as there is around open source software. Therefore, while you can use freeware "as is," there is no real way to improve upon it or obtain support for it.

Thus, freeware is "free" as in those "Free Treadmill" classified advertisements. [27]

2.2. Free and Open-Source Software (FOSS)

2.2.1. Free Software Definition (FSD)

The concept of free software was formulated in 1980s by Richard Stallman. Paraphrasing Roosevelt, he has declared, that each program user should have four freedoms: the right to start, distribute, study and improve the program.

Gradually these rights were concretized, and in 1996 Free Software Definition (FSD) has been formulated:

- The freedom to run the program, for any purpose (freedom 0).
- The freedom to study how the program works, and adapt it to your needs (freedom 1).
  Access to the source code is a precondition for this.
- The freedom to redistribute copies so you can help your neighbor (freedom 2).
- The freedom to improve the program, and release your improvements to the public, so that
  the whole community benefits (freedom 3). Access to the source code is a precondition for
  this.

A program is free software if users have all of these freedoms. Thus, you should be free to
redistribute copies, either with or without modifications, either gratis or charging a fee for distribution,
to anyone anywhere. Being free to do these things means (among other things) that you do not have
to ask or pay for permission.

You should also have the freedom to make modifications and use them privately in your own work or
play, without even mentioning that they exist. If you do publish your changes, you should not be
required to notify anyone in particular, or in any particular way.

The freedom to use a program means the freedom for any kind of person or organization to use it on
any kind of computer system, for any kind of overall job, and without being required to communicate
subsequently with the developer or any other specific entity.

The freedom to redistribute copies must include binary or executable forms of the program, as well as
source code, for both modified and unmodified versions. (Distributing programs in runnable form is
necessary for conveniently installable free operating systems.) It is ok if there is no way to produce a
binary or executable form for a certain program (since some languages don't support that feature),
but you must have the freedom to redistribute such forms should you find or develop a way to make
them.

In order for the freedoms to make changes, and to publish improved versions, to be meaningful, you
must have access to the source code of the program. Therefore, accessibility of source code is a
necessary condition for free software.

In order for these freedoms to be real, they must be irrevocable as long as you do nothing wrong; if
the developer of the software has the power to revoke the license, without your doing anything to
give cause, the software is not free. [28]
2.2.2. **Open-source software**

Open source means that the source code is available to all potential users, and they are free to use, modify, and re-distribute the source code. (For more details, see appendix 3) Legally, the "free" of open source refers exclusively to the source code, and it is possible to have support, services, documentation, and even binary versions which are not monetarily free. (Although some licenses, notably the GPL, requires that the source code always be freely available in such cases.)

In practice, open source usually means that the application is free to users as well as developers. Furthermore, most open source software have communities that support each other and collaborate on development. Therefore, unlike freeware, there are future enhancements, and, unlike shareware, users are not dependent on a single organization.

Open source advocates like to say that open source software is "free" as in "free speech," which is true. Since the user has the source code, it's also usually "free" as in "free lunch," even if sometimes you'd have to tip the waiter to get good service or pay for the wine. [27]

2.2.3. **Public domain software**

Public domain software is software that is not copyrighted. If the source code is in the public domain, that is a special case of non-copylefted free software, which means that some copies or modified versions may not be free at all.

In some cases, an executable program can be in the public domain but the source code is not available. This is not free software, because free software requires accessibility of source code. Meanwhile, most free software is not in the public domain; it is copyrighted, and the copyright holders have legally given permission for everyone to use it in freedom, using a free software license. Sometimes people use the term “public domain” in a loose fashion to mean “free” or “available gratis”. However, “public domain” is a legal term and means, precisely, "not copyrighted“.

Under the Berne Convention, which most countries have signed, anything written down is automatically copyrighted. This includes programs. Therefore, if you want a program you have written to be in the public domain, you must take some legal steps to disclaim the copyright on it; otherwise, the program is copyrighted. [30]

2.2.4. **The difference between Free Software and Open-source software**

While free software by any other name would give you the same freedom, it makes a big difference which name to use: different words convey different ideas.
In 1998, some of the people in the free software community began using the term “open source software” instead of “free software” to describe what they do. The term “open source” quickly became associated with a different approach, a different philosophy, different values, and even a different criterion for which licenses are acceptable. The Free Software movement and the Open Source movement are today separate movements with different views and goals, although they can and do work together on some practical projects.

The fundamental difference between the two movements is in their values, their ways of looking at the world. For the Open Source movement, the issue of whether software should be open source is a practical question, not an ethical one. As one person put it, “Open source is a development methodology; free software is a social movement.” For the Open Source movement, non-free software is a suboptimal solution. For the Free Software movement, non-free software is a social problem and free software is the solution. [32]
3. Copyright in the Digital Age

3.1. Characteristics of Digital Technologies with Copyright Implications

The technologies that presently are raising issues for copyright law are those related to digital storage and transmission of works. There are a number of aspects to these technologies that have implications for copyright law, including the following:

- Ease of Reproduction: Once a work is rendered in digital form, it can be reproduced rapidly, at little cost, and without any loss of quality. Each copy, in turn, can be further reproduced, again without any loss of quality. In this way, a single copy of a work in digital form can supply the needs of millions of users.

- Ease of Dissemination: The emergence of global digital networks allows the rapid, worldwide dissemination of works in digital form. Like broadcasting, digital networks allow dissemination to many individuals from a single point (although, unlike broadcasting, digitized materials need not reach each individual simultaneously). However, digital networks allow each recipient on the network to engage in further dissemination of the work, which can cause the work to spread at a geometric (sometimes called "viral") rate of increase. This, combined with the ease of reproducing works, means that a single digital copy of a work can be multiplied many thousands of times around the world within a few hours. When transmitted through high-speed transmission lines, like coaxial cable networks or even fiber optic lines, the process is even faster, and the capacity for the transmission of works grows as well.

- Ease of Storage: Digital storage is dense, and it gets denser with each passing year. Ever-increasing quantities of material can be stored in a smaller and smaller amount of space. In the early 1990s, CDs, which can store over 600 megabytes of data, were perhaps the predominant form of digital storage used by commercial pirates for storing entire libraries of computer programs or sound recordings with aggregate retail values in the millions of dollars. Today's popular iPod portable music player can store nearly 70 times that amount (around 10,000 songs) in a device the size of a cigarette pack. [16]

3.2. Copyright and the Advance of Digital Technologies.

In recent past the technological innovation has been shaken the copyright institute very intensively and the domain of the relationship, regulated by that law, is changing sharply. File-changing peering networks and copying hardware create the conditions for the massive infringement of copyright. At the same time the system of technical measures for access limitation (DRM) is able to defend the
owners of some kind of content even without the copyright. The first innovation (peering) undermined the copyright, the second one (DRM) makes it useless in the number of cases.

The essence of the intrigue is that copyright is expanding and toughening in response to the increasing number of alternative routes of product capture. The simpler and more accessible is the copying the original thing (or the authorized copy), the wider is the range of cultural practices, where business needs to control that operation and the harder is the copyright law regulations. Due to the technological features of computers the work with digital information is inseparably linked with its copying. On account of that, purely technological reason the users get under the control of right-holder, regardless his intentions to use the digital content legally or illegally… Thus the copyright is changing from the law, regulating the competition of market agents, into the tool of meddling in the private life of millions people.

The strength of that interference is defined by the scale of copyright (i.e. range of rights to be provided due to law), as well as the wide and sometimes secret possibilities of technical means, which are used to provide the action of that institution. In 1790, when the Federal Copyright Act was adopted in the USA, it had relatively small field of application. Today it is fundamentally expanded. If before the copyright was distributed only to republish the integrated works, now the right holder can control any derivative object. [17], [18]

3.3. Is the law a Weathercock?

At first glance, the law allows the judges to solve any new appeared situation, guided by the common sense and justice. But aren’t the gaps within the law too large in order to define the scope of copyright according to the circumstances (term of right, doctrine of free usage, variety of interpretation of derivative products, etc.)? To whom does that freedom suit well? It’s clear answer, while one’s watching how and by whose initiative the term of copyright was changed. In 1790 in the USA Copyright Act set the period of copyright extension within 14 years with the option to prolong it for another 14 years. Two-stage allowed not to extending the right, if there was no sense for the right-holder, and hence, not to overload the system of copyright by the dead weigh. Over time the large corporations of the entertainment industry have captured Congress in this matter, and the copyright period has now been extended eleven times in the last forty years. The most recent extension was the Sonny Bono Copyright Term Extension Act of 1998, which expanded copyright protection to the life of the creator plus seventy years, rather than fifty. The corporate copyrights also were extended to a total of 95 years from the moment of publication. Thus the transition of the works into public good was postponed till the far future.
The campaign to change these laws was led by the Disney Corporation, which had feared the otherwise forthcoming expiration of copyright on Mickey Mouse. Disney characters are frequently drawn from European fairy tales or American folk tales, without payment of any licensing fee.

The reactions of the economists were ambiguous. In 2002 the group of 17 prominent scholars applied to the US Supreme Court, protesting against the copyright extension. It’s worth noting that among them were great experts of institutional organization of the world, the Nobel-prize winners like R. Coase, M. Friedman, K. Arrow, J. Buchanan and G. Akerlof. They gave the following arguments:

- the positive effect of copyright extension is extremely insignificant for creators,
- the usage of innovation from already created works is absent,
- the extension will increase the social expenses, mainly the expenses of borrowings.

However the economists, specialized on the copyright issues, took another position. Liebowitz and Margolis proved that the positive effect in respect of new works is underestimated, the former works were not taken into account, and social expenses are exaggerated . W. Landes and R.Posner were for the unlimited copyright extension (as with trade-marks).

Finally, economists by cast of mind and occupation, who used to talk from the “over combat” standpoint, didn’t come to the consent even on one question – about the copyright extension. There are many disputable aspects in copyright. Only one thing is clear: it is impossible to define, whether the present level of copyright is optimal, understated or set too high. Besides, the specific of property rights (what the owner can do and what he can not) is constantly getting complicated, and even if the mode of copyright would be ideal for some period of time, it needs the permanent tuning. But it is impossible to make too often.

The copyright protects the creative work via economic interests. That’s why when the economists could not get the solution the issue is passing to the policy-makers and lawyers. Thanked to copyright they have got the huge 'unploughed’ field, which give them the permanent and high paid job.

The interpretation of copyright made it a tool of predatory behavior and blackmail. The large firms are the winners: the court and advocacy expenses are the substantial lines in budget and became key points in the competitive struggle. The more unsteady is bearing on proves, the more expensive is desired truth. The law can bend in different sides with the help of money. The winners are the monopolists with the packages of copyright and jurisprudence, especially in the media industry. [17], [18] “Corporate copyrights” last for 95-120 years - more than enough time for companies to reap large financial rewards. These multi-billion dollar global media giants include:
• **Metro-Goldwyn-Mayer, Inc. (MGM).** MGM owns Metro-Goldwyn-Mayer Studios Inc., United Artists Corporation, United Artists Films Inc. and Orion Pictures Corporation. MGM has been a long-term lobbyist of increased copyright protection. It also owns the largest post-1948 film library in the world with more than 4,000 titles and 10,200 TV shows.

**Viacom.** Viacom is the world’s #3 media company, and spans movies, television, radio, and the internet. It owns CBS, Paramount Pictures, the United Paramount Network (UPN), MTV Networks (MTV, VH1, Nickelodeon), Showtime Networks, Comedy Central (50%), the publisher Simon & Schuster, Infinity Broadcasting (some 185 radio stations), and 82% of Blockbuster (the #1 video rental chain). Viacom boasts over 500,000 copyrights. Paramount Pictures maintains a library of some 1,000 films and releases about a dozen new titles annually. The company also produces and distributes television programming, owns and operates five theme parks, operates more than 200 theaters, and owns complete or partial rights to more than 100,000 musical works.

• **The Walt Disney Company.** Disney is the world’s #2 media conglomerate. The Walt Disney Company owns ABC, Inc (including the ABC Television Network and ABC Radio Networks), Fox Family Worldwide, Buena Vista Production, Touchstone, Hollywood Pictures, and the Miramax Film Corporation.

• **AOL Time Warner.** “Whether you watch it, read it, listen to it, or log on to it, chances are it comes from the mighty colossus that is AOL Time Warner.” AOL Time Warner stands above the crowd as the #1 media conglomerate in the world. The company’s behemoth reach extends across a vast range of interests including online services, film, TV, music, cable networks and systems, publishing, and professional sports. The following companies are wholly owned subsidiaries of AOL Time Warner: America Online, AOL Time Warner Book Group, AOL Time Warner Interactive Video, Home Box Office, New Line Cinema, Time Inc., Time Warner Cable, Turner Broadcasting, Warner Bros., and Warner Music Group.

  - **Turner Broadcasting System (TBS).** TBS owns several cable TV networks, including CNN news properties, the Cartoon Network, TBS Superstation, Turner Classic Movies, and Turner Network Television (TNT). It also owns 66% of the WB Television Network, New Line Cinema, and Castle Rock Entertainment. Additionally, TBS owns professional baseball’s Atlanta Braves, professional basketball’s Atlanta Hawks, and professional hockey’s Atlanta Thrashers.

  - **Time, Inc.** Time is the leading U.S. consumer magazine publisher, with approximately 140 magazines in its collection, including: *Time, People, Sports Illustrated, Fortune, Money, Entertainment Weekly, In Style,* and *Southern Living.*
3.4. Economic Philosophy of Copyright

There is more then one intrigue around copyright. The institute, called to regulate the productive relations in culture, became a tool in the game which has not much in common with the declared purposes. The copyright does not protect an idea; it establishes monopoly for their subjecting. To bring the people something new, we need to use the common dictionary. But it is privatized, and use of any sign already entered the life, demands someone’s permission and should be gained. The rights of those in the avant-garde are protected and the rest are infringed. Thus there are the terms for imposing the rules to a society, and behind are interests of narrow groups’. [17], [18]

3.5. What is Copyleft?

However the author can refuse a copyright from the strategic point of view and to turn to its antipode - a copyleft.

The publication, licensed under Copyleft license, means that every person who receives a copy of a work has the same rights to study, use, modify, and also redistribute both the work, and derived versions of the work. But it is necessary to specify the primary author and a source. It seems to be the simplest way to make product free by its transfer in public property. However there is a high risk that someone, modifying the product, will distribute it under the copyright license. Under a copyleft form of copyright license, the restrictions imposed are that the work can be copied, modified or used in any subsequent work if, and only if, the author of that subsequent work agrees to grant the same copyleft rights to whom ever the work is distributed to freely copy, use and modify the subsequent work. For secondary user there is no way to register the derived (modified) product as a work under a copyright. Copyleft is based on the copyright law, but he is securing the freedom of distribution instead of keeping privatization.

The idea of copyleft is more then 20 years old. In 1980s Richard Stallman, working at the Massachusetts Institute of Technology (MIT), proposed an idea of the “open code”, because he thought that it was absurd impossibility to modernize the poor working computers due to the confidential source code. He proposed the tool to legalize these activities – GNU General Public License (GNU GPL). It was a license for free software, created in the framework of the project GNU in 1988, or abbreviated as GNU GPL or simply GPL.

- Warner Bros., Inc. Today, the vast Warner Bros. library is one of the largest in the world. It consists of more than 6,500 feature films, 32,000 television titles and 13,500 animated titles. [29]
«In order to apply the copyleft to software – wrote Stallman – we firstly protect it by the copyright, then we add the terms on distribution, which serve as a legal tool, giving the right to use, to modify and secondary distribution of programme code, but if the terms of distribution were not changed». Primarily GNU GPL was assumed to use only for the computer software, but lately it was expanded over other kinds of digital and non-digital products: researches, works of art, etc.. [17], [18], [19], [20]

The series of licenses for copyleft class was developed by the non-commercial organization Creative Commons, established in 2001 in the USA by Lawrence Lessig – professor of Stanford Law Academy. The license Creative Commons lets to keep the authorship and to protect some rights ( Some Rights Reserved ). Generally it let the free copying, distribution, demonstration and performing the objects of copyright – music, video, drawings, photography and books (including the commercial use) as well as the production of derived objects of copyright. In order to use that license, the third person should refer to the author of the original work and note that it is distributed under the copyleft license, by CC (Creative Commons). [21], [22]

The free distribution is not obligatory free of charge. The movement’s founder R.Stallman was not only for the payment, but he even “encourage those who distributed free PO as expensive as they want and they can”. Although the people are not obliged to pay for the distribution of free product, the social norms and the economy of search and testing costs are the powerful stimulus. Everything depends on artists, composers, scholars, independent producers and users, capable contribute to the realization of free creative exchange.
Conclusion

Three hundred years ago, copyright law developed out of a British system designed to give a handful of companies a monopoly over the media industry (then limited to the publishing industry). As their power faded, the publishing industry appealed to the interests of the author and the public as a means of preserving their monopoly. They succeeded in shifting the focus, and for the next 150 years, copyright law was designed to benefit society as a whole. Gradually, however, the media industry reasserted its power and copyright law began to tilt back in favor of the industry. Today, copyright policy around the globe benefits the media industry at the expense of the public. Works copyrighted today will not enter the public domain for a century or more, starving the public domain and allowing the media industry to engorge itself on its government-sanctioned monopoly (earning profits well beyond Madison's idea of an incentive to create). Moreover, with the move into the Digital Age, there is little hope copyrighted works will ever enter the public domain. Works created today and protected by copyright management systems are permanently held beyond the reach of the public domain and beyond the grasp of fair use. As more and more works are published exclusively in digital form, we may very well enter an age in which access to information is controlled by the media industry. [29]

Big media have always lobbied for more control over how people use culture, but until now, it's largely been through changes to the copyright statutes. The distribution apparatus - record stores, booksellers, movie theaters etc. - was not a concern since it was secure and pretty much by definition "read-only." But when we're dealing with digital media, the distribution apparatus becomes a central concern, and that's because the apparatus is the internet, which at present, no single entity controls.

With the proliferation of digital technology in today's world, the flow of ideas, concepts, and content across the globe has gone, in little more than a generation, from a gentle flow to an intense torrent. Indeed, wherever someone has a computer, a USB port, and a Flash drive, there's a potential for immense unauthorized borrowing.

Out of the need to have some reasonable control over our work products, but also to enable appropriate sharing throughout our global village, new ways of looking at intellectual property rights are emerging. There is a brisk debate going on, and indications are that it will take a while yet to work out. [23] It is absolutely possible, that someday this period will be thought of as a Renaissance, one of the times that technology and imagination have intersected to redefine the way a culture creates and represents knowledge. [24]
Appendix

Appendix 1: Signatories of the Berne Convention (June 2006):

- Albania
- Algeria
- Andorra
- Antigua and Barbuda
- Argentina
- Armenia
- Austria
- Azerbaijan
- Belarus
- Belgium
- Belize
- Benin
- Bhutan
- Bolivia
- Bosnia and Herzegovina
- Botswana
- Brazil
- Brunei Darussalam
- Bulgaria
- Burkina Faso
- Cameroon
- Canada
- Cape Verde
- Central African Republic
- Chad
- Chile
- China
- Colombia
- Comoros
- Congo
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Cyprus
- Czech Republic
- Democratic People's Republic of Korea
- Democratic Republic of the Congo
- Denmark
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Estonia
- Fiji
- Finland
- France
- Gabon
- Gambia
- Georgia
- Germany
- Ghana
- Greece
- Grenada
- Guatemala
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Holy See
- Honduras
- Hungary
- Iceland
- India
- Indonesia
- Ireland
- Israel
- Italy
- Jamaica
- Japan
- Jordan
- Kazakhstan
- Kenya
- Kyrgyzstan
- Latvia
- Lebanon
- Lesotho
- Liberia
- Libyan Arab Jamahiriya
- Liechtenstein
- Lithuania
- Luxembourg
- Madagascar
- Malawi
- Malaysia
- Mali
- Malta
- Mauritania
- Mauritius
- Mexico
- Micronesia (Federated States of)
- Monaco
- Mongolia
- Morocco
- Namibia
- Nepal
- Netherlands
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Norway
- Oman
- Pakistan
- Panama
- Paraguay
- Peru
- Philippines
- Poland
- Portugal
- Qatar
- Republic of Korea
- Republic of Moldova
- Romania
- Russian Federation
- Rwanda
- Saint Kitts and Nevis
- Saint Lucia
- Saint Vincent and the Grenadines
- Samoa
- Saudi Arabia
- Senegal
- Serbia and Montenegro
- Singapore
- Slovakia
- Slovenia
- South Africa
- Spain
- Sri Lanka
- Sudan
- Suriname
- Swaziland
- Sweden
- Switzerland
- Syrian Arab Republic
- Tajikistan
- Thailand
- The former Yugoslav Republic of Macedonia
- Togo
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Ukraine
- United Arab Emirates
- United Kingdom
- United Republic of Tanzania
- United States of America
- Uruguay
- Uzbekistan
- Venezuela
- Viet Nam
- Zambia
- Zimbabwe

### Appendix 2: the terms of protection in the United Kingdom:

<table>
<thead>
<tr>
<th>Type of work</th>
<th>When does copyright expire?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Literary, dramatic, musical or artistic works</td>
<td>70 years from the end of the calendar year in which the author dies.</td>
</tr>
<tr>
<td>Works of unknown authorship</td>
<td>70 years from the end of the calendar year in which the work is made. However, if the work is made available to the public during that time then copyright expires 70 years from the end of the calendar year in which it is first made publicly available.</td>
</tr>
<tr>
<td>Computer-generated works</td>
<td>50 years from the end of the calendar year in which the work is made.</td>
</tr>
<tr>
<td>Sound recordings</td>
<td>50 years from the end of the calendar year in which the recording is made. However if during that period the recording is published, copyright expires 50 years from the end of the calendar year in which it is first published. If the recording is not published by is otherwise communicated to the public, then copyright expires 50 years from the end of the calendar year in which it is first so made available.</td>
</tr>
<tr>
<td>Films</td>
<td>70 years from the end of the calendar year of the death of the last to die of the following persons: the principal director; the author of the screenplay; the author of the dialogue; and the composer of music specifically created and used in the film.</td>
</tr>
<tr>
<td>Broadcasts and cable programmes</td>
<td>50 years from the end of the calendar year in which the broadcast is delivered.</td>
</tr>
<tr>
<td>Typographical arrangements of published editions</td>
<td>25 years from the end of the calendar year in which the edition is first published.</td>
</tr>
<tr>
<td>Crown copyright literary, dramatic, musical or artistic works</td>
<td>125 years from the end of the calendar year in which the work is made; or if published commercially within 75 years from the end of the calendar year it is made; or 50 years from the end of the calendar year in which it is first so published, whichever period is shorter.</td>
</tr>
<tr>
<td>Photographs</td>
<td>In general terms it is the year of the photographer’s death plus 70 years or, if anonymous, 70 years from creation or, if made available to the public, 70 years from the end of the year in which that occurred. However, there is a complication in relation to photographs taken before 1 January 1996. This is clearly and concisely explained on the government’s intellectual property web-site.</td>
</tr>
</tbody>
</table>

Source: “Intellectual Property and Copyright in the Digital Environment”, University of Cambridge [26]
Appendix 3: The Open Source Definition (Annotated)

Introduction

Open source doesn't just mean access to the source code. The distribution terms of open-source software must comply with the following criteria:

1. **Free Redistribution**

   The license shall not restrict any party from selling or giving away the software as a component of an aggregate software distribution containing programs from several different sources. The license shall not require a royalty or other fee for such sale.

   **Rationale:** By constraining the license to require free redistribution, we eliminate the temptation to throw away many long-term gains in order to make a few short-term sales dollars. If we didn't do this, there would be lots of pressure for cooperators to defect.

2. **Source Code**

   The program must include source code, and must allow distribution in source code as well as compiled form. Where some form of a product is not distributed with source code, there must be a well-publicized means of obtaining the source code for no more than a reasonable reproduction cost preferably, downloading via the Internet without charge. The source code must be the preferred form in which a programmer would modify the program. Deliberately obfuscated source code is not allowed. Intermediate forms such as the output of a preprocessor or translator are not allowed.

   **Rationale:** We require access to un-obfuscated source code because you can't evolve programs without modifying them. Since our purpose is to make evolution easy, we require that modification be made easy.

3. ** Derived Works**

   The license must allow modifications and derived works, and must allow them to be distributed under the same terms as the license of the original software.

   **Rationale:** The mere ability to read source isn't enough to support independent peer review and rapid evolutionary selection. For rapid evolution to happen, people need to be able to experiment with and redistribute modifications.
4. Integrity of The Author’s Source Code

The license may restrict source-code from being distributed in modified form only if the license allows the distribution of "patch files" with the source code for the purpose of modifying the program at build time. The license must explicitly permit distribution of software built from modified source code. The license may require derived works to carry a different name or version number from the original software.

**Rationale:** Encouraging lots of improvement is a good thing, but users have a right to know who is responsible for the software they are using. Authors and maintainers have reciprocal right to know what they're being asked to support and protect their reputations.

Accordingly, an open-source license must guarantee that source be readily available, but may require that it be distributed as pristine base sources plus patches. In this way, "unofficial" changes can be made available but readily distinguished from the base source.

5. No Discrimination Against Persons or Groups

The license must not discriminate against any person or group of persons.

**Rationale:** In order to get the maximum benefit from the process, the maximum diversity of persons and groups should be equally eligible to contribute to open sources. Therefore we forbid any open-source license from locking anybody out of the process.

Some countries, including the United States, have export restrictions for certain types of software. An OSD-conformant license may warn licensees of applicable restrictions and remind them that they are obliged to obey the law; however, it may not incorporate such restrictions itself.

6. No Discrimination Against Fields of Endeavor

The license must not restrict anyone from making use of the program in a specific field of endeavor. For example, it may not restrict the program from being used in a business, or from being used for genetic research.

**Rationale:** The major intention of this clause is to prohibit license traps that prevent open source from being used commercially. We want commercial users to join our community, not feel excluded from it.

7. Distribution of License

The rights attached to the program must apply to all to whom the program is redistributed without the need for execution of an additional license by those parties.

**Rationale:** This clause is intended to forbid closing up software by indirect means such as requiring a non-disclosure agreement.
8. License Must Not Be Specific to a Product

The rights attached to the program must not depend on the program's being part of a particular software distribution. If the program is extracted from that distribution and used or distributed within the terms of the program's license, all parties to whom the program is redistributed should have the same rights as those that are granted in conjunction with the original software distribution.

Rationale: This clause forecloses yet another class of license traps.

9. License Must Not Restrict Other Software

The license must not place restrictions on other software that is distributed along with the licensed software. For example, the license must not insist that all other programs distributed on the same medium must be open-source software.

Rationale: Distributors of open-source software have the right to make their own choices about their own software.

Yes, the GPL is conformant with this requirement. Software linked with GPLed libraries only inherits the GPL if it forms a single work, not any software with which they are merely distributed.

10. License Must Be Technology-Neutral

No provision of the license may be predicated on any individual technology or style of interface.

Rationale: This provision is aimed specifically at licenses which require an explicit gesture of assent in order to establish a contract between licensor and licensee. Provisions mandating so-called "click-wrap" may conflict with important methods of software distribution such as FTP download, CD-ROM anthologies, and web mirroring; such provisions may also hinder code re-use. Conformant licenses must allow for the possibility that (a) redistribution of the software will take place over non-Web channels that do not support click-wrapping of the download, and that (b) the covered code (or re-used portions of covered code) may run in a non-GUI environment that cannot support popup dialogues.

Source: Open Source Initiative [31]
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Bibliography


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[22] CreativeCommons, http://creativecommons.org/