# ⊂ (FLOSS legal/policy ∩ CC [4.0])

**FOSDEM 2012 Legal Devroom**

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Creative Commons

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# Encourage broadening of FLOSS legal & policy in two dimensions

- expertise and interest important in non-software domains

- pro-freedom public policy

∴ CC [4.0] is of interest

# *Public* Policy

- same rationale favoring freedom as (funding, procurement, regulatory) policy for software and others, e.g., public pays, public access; min monopoly, max competition, equality, welfare

- government, institutional; scales down to business and individual [responsibility]

- not limited to favoring free licenses, nor copyright reform

- small successes in various fields; would working across fields help?

# Is software freedom important?

- then voluntary public licenses, including strong copyleft ones, are weak medicine

- but stating that software freedom is important doesn't make it so. saying "free[dom]" helps, but just a tiny bit

- the most important policy challenge is to convince that software freedom is an important social good. eg expand and critique free software ethics, economists and other social scientists should care, activists concerned about human rights, competition, environment should care, etc

# SOPA/PIPA/ACTA

- free software and free culture activists are good opponents

- we should expect and make free software and free culture activism part of the opposition

**evan**

Someday knowing the ins and outs of copyright will be like knowing the intricate rules of internal passports in Communist East Germany.

about 14 days ago from web at Montreal, Quebec, Canada

**douglasawh**

@evan somewhere in there, there is a "Soviet Russia" joke

about 14 days ago from 280.status.net at Concord, New Hampshire, United States

**evan**

That was my first version and I decided to avoid it.

about 14 days ago from web at Montreal, Quebec, Canada

**evan**

There's probably another good parallel in colonialism. People who know Open [Source|Content] have internalized the copyright fallacy.

about 14 days ago from web at Montreal, Quebec, Canada

**The remainder of this talk is almost 100% about licenses, though more charitable interpretations are possible, as always**

#irony

# Domain Specific Licenses have been created for

- software

- content

- hardware

- databases

- fonts

- public sector information

- software documentation

- standards documentation

- mostly avoided: educational materials, scientific communications, music, wikis

# Domain Specific Licenses have been created for

- software (GPL...)

- content (CC-BY...)

- hardware (OHL...)

- databases (ODbL...)

- fonts (OFL...)

- public sector information (OGL...)

- software documentation (FDL...)

- standards documentation (OWFa...)

- mostly avoided: educational materials, scientific communications, music, wikis

# Domains software and content licenses have been used in (conservatively)

- software (software)

- content (software, content)

- hardware (software, content)

- databases (content)

- fonts (software, content)

- public sector information (content)

- software documentation (software, content)

# Overlap, domain-specific mechanisms: what do they mean?

- License proliferation, especially to accommodate specifics of various domains is underrated as a problem? Or overrated?

- Features of new licenses vs costs of further silos

- FLOSS legal experts can benefit the world by either helping other domains use FLOSS licenses or help domain-specific licenses reflect best lessons from FLOSS

- CC strongly disrecommends using CC licenses (excepting CC0) for software; should relevant FLOSS entities disrecommend FLOSS licenses for some domains, or support those domains?

- Why does CC exist as it is?

# Creative Commons 4.0 Licenses

Highly likely you'll encounter them in a substantial way over the next decade as a free software activist/developer/user … it is in your interest to help get them 'right'.

# 4.0 goals

Internationalization – further adapt the core suite of international licenses to operate globally, ensuring they are robust, enforceable and easily adopted worldwide;

Interoperability – maximize interoperability between CC licenses and other licenses to reduce friction within the commons, promote standards and stem license proliferation;

# 4.0 goals

Long-lasting — anticipate new and changing adoption opportunities and legal challenges, allowing the new suite of licenses to endure for the foreseeable future;

Data/PSI/Science/Education — recognize and address impediments to adoption of CC by governments as well as other important, publicly-minded institutions in these and other critical arenas; and

Supporting Existing Adoption Models and Frameworks – remain mindful of and accommodate the needs of our existing community of adopters leveraging pre-4.0 licenses, including governments but also other important constituencies.

# Vision or continuity?

Which (or rather for each decision) is best for the commons?

4(c) Except as otherwise agreed in writing by the Licensor or as may be otherwise permitted by applicable law, if You Reproduce, Distribute or Publicly Perform the Work either by itself or as part of any Adaptations or Collections, You must not distort, mutilate, modify or take other derogatory action in relation to the Work which would be prejudicial to the Original Author's honor or reputation. Licensor agrees that in those jurisdictions (e.g. Japan), in which any exercise of the right granted in Section 3(b) of this License (the right to make Adaptations) would be deemed to be a distortion, mutilation, modification or other derogatory action prejudicial to the Original Author's honor and reputation, the Licensor will waive or not assert, as appropriate, this Section, to the fullest extent permitted by the applicable national law, to enable You to reasonably exercise Your right under Section 3(b) of this License (right to make Adaptations) but not otherwise.

# Moral rights

- Clarify

- Do not add as license condition

- Ideally maximize waiving, minimize 'invalidity'

- CC-*-3.0-US does not contain clause, but needed globally

**tmarble**

/me needs to get smart about *Sui generis database rights* before I meet @mlinksva

about 2 days ago from Hotot at Minneapolis, Minnesota, United States

**mlinksva**

@tmarble that is the worst thing anyone has ever said about me. :-)

about 2 days ago from web at Oakland, California, United States

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## *Sui generis* database restrictions

- like © on databases (EU, similar exists elsewhere...)

- bad policy from inception

- *n* generations hence an *em* reformer will state: "We need database rights. I enjoy blockbuster databases with my dearest younger self-copies. But database rights are now out of balance and threaten our liberties and architecture. Maybe a 'statutory payment' to database owners from all computronium purchases is a solution."

# Subject matter

- eg *sui generis* covered databases

- users need permission in face of new bad policies; is any future proofing possible?

- license or waive?

- IMO licensing wins on simplicity and consistency alone

- what approaches have software licenses taken to subject matter and future-proofing? eg GPL: "Copyright" also means copyright-like laws that apply to other kinds of works, such as semiconductor masks.

# Nonfree: NoDerivatives

- only arch-conservatives use it

# Nonfree: NonCommercial

- nothing interesting for this venue and section

- however, back to policy section: continued attractiveness of NC underscores inadequacy of case made for copyleft and more significantly commons

# Nonfree

- various options for increasing clarity and distance between 'copyright choice' and 'creative commons'

## Copyleft scope

- (If you think) copyleft is good, why not make it stickier?

- 2.0 added "For the avoidance of doubt, where the Work is a musical work, performance or phonogram, the synchronization of the Work in timed-relation with a moving image ("synching") will be considered an Adaptation for the purpose of this License."

4(a) … When You Distribute or Publicly Perform the Work, You may not impose any effective technological measures on the Work that restrict the ability of a recipient of the Work from You to exercise the rights granted to that recipient under the terms of the License.

## DRM

- retain prohibition?

- parallel distribution?

- [and?] circumvention permission?

- how routine is violation of current term?

- has current term ever been enforced?

- to what extent is GPLv3 implementation relevant, and can it be improved?

**Source**

- No CC licenses have a source requirement

- Some people would like one for non-software

- Increased source-orientation might help free culture production

- Does the world need yet another license?

# "interoperability"

- what does it mean?

- compatibility is pairwise: 1-way (donor-recipient) or bilateral (any exist?)

**Alignment**

- Attribution

- Moral rights

- Termination

- DRM

# Other copyleft licenses

- LAL

- FDL

- ODbL

- GPL

- ...

Challenges include: alignment, user expectation, governance

## Should a license be readable?

Maybe

## Does the above seem like an absurd question?

Yes

4.0

**links**: con**vey** yo**ur**self to

wiki.creativecommons.org/4.0

creativecommons.org

@mlinksva