



Licensing and Legal Challenges for Sustainable Digitalisation

Andrew Katz

University of Skövde, Moorcrofts LLP

www.moorcrofts.com

andrew.katz@moorcrofts.com



http://www.kalimanthrope.com/images_zoom/zoom_ilas-kenceng_bovides.html, Public Domain,
<https://commons.wikimedia.org/w/index.php?curid=74274155>

Harvard College June 8th 1753

- 8 Friday, at College, a cloudy dull morning, and so continued till about 4 a clock, when it began to rain miserably but continued not long, but remained stormy all the which night finished with a snow.
- 9 Saturday, at College, the weather still remaining cloudy all Day till 6 o'clock, when the clouds were dissipated, and the sun broke forth in all his glory.
- 10 Sunday, at College, a clear morning, heard Mr Appleton explain those verses in 1 Cor. 12. Chap. 12. first verse, and in the afternoon heard him preach from those verses in 2d of matth. 11. weyl, wealth and pray that ye enter not in to temptation.
- 11 Monday, at College, a fair morning, and pretty warm, about 2 o'clock there appeared some symptoms of an approaching shower, attended with some hardes, and lightning.
- 12 Tuesday, at College, a cloudy morning, heard Dr Wigglesworth preach from the 13th chapter of exodus 8, 9, 10, 11, 12.
- 13 Wednesday, at College, a cloudy morning, about 10 o'clock the sun shone out very warm, but about 12 the heat was in part, abated by the rising of the wind.
- 14 Thursday, at College, a clear, warm morning but about 2 o'clock came up a very hard shower, accompanied with some thunder and lightning.
- 15 Friday, at College, a fair, warm morning, at 7 o'clock continued.
- 16 Saturday, at College, a fair morning, but not very warm.
- 17 Sunday, at College, a fine morning, heard Mr Appleton explain those words in 1 Cor. 12. Chap. 12. from 2 to the end of 11 verse, in the afternoon heard him preach from the first Psalm, and first verse.
- 18 Monday, at College, a warm morning, at 11 o'clock read Theses on this question, (viz) antheum et sphenum sive nimia pluvialis et ariditate aeris.

Royall Tyler Collection.

Gift of Helen Tyler Brown, Vermont Historical Society, Montpelier.
Not to be reproduced without permission.

<https://blog.librarylaw.com/librarylaw/2010/03/factoids-what-is-the-oldest-work-protected-by-copyright-in-the-us-what-work-will-have-the-longest-protection.html>



Image credit – Wikipedia: CC-BY-SA -
https://en.wikipedia.org/wiki/Floppy_disk#%E2%80%8B5_1%E2%81%844-inch_floppy_disk



Licensing and Legal Challenges

Copyright – you can't copy or distribute certain materials because of copyright

Copyright - licensing issues may prevent you from using the software you need to access the content

Patent – you can't access the content you need because of patent protection

Contract – you can't access the content you need because you are contractually prevented

Database and similar rights...

Open Content Licensing

Allow anyone to use the content

- Irrevocable
- Available to anyone
- May be subject to conditions
 - Attribution (keep copyright notices etc)
 - Share alike (if you distribute to others, must be on the same terms)
- Non-open
 - No derivs
 - Non commercial

Other Opens

Open Data – Open Database Licence (ODbL)
- CC0

Open Hardware – CERN OHL, Solderpad licences

Open Processes – Open standards, open
governance, etc. etc.

Free/Open Source Software Licensing

Similar to open content licensing

Covers the copyright, patents and other rights in the software

Means that anyone can use, study, change, and distribute the software (including any changes without restriction, for any purpose) subject to conditions

- attribution

- sharealike (called 'copyleft' or 'reciprocal')

What does this mean for sustainable content

1. The content itself can be used without restriction
2. Software to read and display the content can be copied, amended, and distributed.
3. In theory...

What is Free and Open Source Software

Free Software is software that:

1. Can be used for any purpose
2. Can be studied and changed (source code required)
3. Can be distributed freely (and source code)
4. Your changed versions can also be distributed freely.

Open Source Initiative

The 10 criteria of the 'Open Source Definition' – have a very similar effect to the four freedoms.

Open Source and Free Software are equivalent for most practical purposes.

Open Source Software and Sustainable Content

1. Open source reader software remains legal to use for ever.
2. Open source reader can be modified to work with newer versions of operating systems etc.
3. The source code of the reader will act as a reference guide to the format.
4. In theory...

Proprietary Software

- Any software which isn't open source
- If any of the freedoms are restricted, it's proprietary
- Covers normal purchased software like Photoshop:
 - No source code available
 - Limited user rights (e.g. 'home and student')
 - Usually pay for it
 - Rights may cease on withdrawal of support
 - No right or ability to change the software
 - May not distribute or make copies

Open Source-like software

Non-commercial restriction

No-derivatives restriction

“Source available”, but can’t be used for specific use cases (e.g. to provide a SaaS)

“Shareware”

Only works like open source if standards compliant.

Some Licences

- BSD – a very simple licence (family)
- MIT – another very simple licence
- Apache – a less simple licence with an explicit patent licence
- GPL – a copyleft, or ‘sharealike’ licence

BSD (2-clause)

Copyright <YEAR> <COPYRIGHT HOLDER>

Redistribution and use in source and binary forms, with or without modification, are permitted provided that the following conditions are met:

1. Redistributions of source code must retain the above copyright notice, this list of conditions and the following disclaimer.
2. Redistributions in binary form must reproduce the above copyright notice, this list of conditions and the following disclaimer in the documentation and/or other materials provided with the distribution.

THIS SOFTWARE IS PROVIDED BY THE COPYRIGHT HOLDERS AND CONTRIBUTORS "AS IS" AND ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. IN NO EVENT SHALL THE COPYRIGHT HOLDER OR CONTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.



Copyright (c) <year> <copyright holders>

Permission is hereby granted, free of charge, to any person obtaining a copy of this software and associated documentation files (the "Software"), to deal in the Software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the Software, and to permit persons to whom the Software is furnished to do so, subject to the following conditions:

The above copyright notice and this permission notice shall be included in all copies or substantial portions of the Software.

THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE.

Apache 2.0

Much longer than MIT and BSD but similar in effect.

Also has an explicit patent licence:

Subject to the terms and conditions of this License, each Contributor hereby grants to You a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable (except as stated in this section) patent license to make, have made, use, offer to sell, sell, import, and otherwise transfer the Work, where such license applies only to those patent claims licensable by such Contributor that are necessarily infringed by their Contribution(s) alone or by combination of their Contribution(s) with the Work to which such Contribution(s) was submitted. If You institute patent litigation against any entity (including a cross-claim or counterclaim in a lawsuit) alleging that the Work or a Contribution incorporated within the Work constitutes direct or contributory patent infringement, then any patent licenses granted to You under this License for that Work shall terminate as of the date such litigation is filed.

GPL Family

Requires that if you redistribute the code, with or without modifications, you do so under the same licence.

Intended to keep code free, and create an ever-increasing pool of free software that anyone can use.

Some variants have an explicit patent licence (v3), some don't (v2).

SaaS Terms

SaaS implies use of "someone else's computer".

A SaaS user agreement is not a copyright licence.

SaaS user agreement gives you the right to use the functionality of the software, not to access or run the software itself.

The difference between driving a car and travelling on a train.

SaaS Terms

Do not have the protections guaranteed by the Software Directive

Do not guarantee availability of the code, even if the code itself is copyleft (there have been some attempts – e.g. AGPL – to correct this)

Impact on Sustainability

Content itself can be affected by IP restrictions.

Open content licences (e.g. Creative Commons)

Access to the content can be affected by IP restrictions

- software that can read it – use open source!
- hardware that can read it – open source hardware!

Impact on sustainability

Patents:

May impact the file format itself

May impact the software used to read the file format

May impact the hardware used to read the medium containing the content.

May impact the content itself (e.g. hardware designs, or secondary infringement)

Open Source and Content Licences

Help with intellectual property like copyright and database right (chain of copying).

Do not help so much with patents (can infringe even if not copied and without knowledge)

Do not help so much with SaaS access agreements.



Licensing and Legal Challenges for Sustainable Digitalisation

Andrew Katz

University of Skövde, Moorcrofts LLP

www.moorcrofts.com

andrew.katz@moorcrofts.com