Licensing and Legal Challenges for Sustainable Digitalisation

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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 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…
- 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>

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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.
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