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The Pirate Copyright Code

Version 2.0

PIRATEN PARTEI

Impressum

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Besonderer Dank geht an die Authoren des original WITTEM copyright code.
(`http://www.copyrightcode.eu`)

Inhaltsverzeichnis

1 The Story

1.1 Der ursprüngliche WITTEM Code

Diese Arbeit ist ein Derivat des “European copyright code„

The members of the WITTEM group describe their goals as the following:

> The aim of the Wittem Project and this Code is to promote transparency and consistency in European copyright law. The members of the Wittem Group share a concern that the process of copyright law making at the European level lacks transparency and that the voice of academia all too often remains unheard. The Group believes that a European Copyright Code drafted by legal scholars might serve as a model or reference tool for future harmonization or unification of copyright at the European level. Nevertheless, the Group does not take a position on the desirability as such of introducing a unified European legal framework.[1]

We – the authors – as members of the Pirate Party of Germany were very impressed by these aims. The integration of academic and expert knowledge was always part of the Pirate Party's style of politics. Transparency is one of the main goals of its political platform. While reading the code's actual content we were convinced by its simplicity and well organized structure.

The Pirate Parties think of themselves as an international and of course a European movement with the reformation of copyright law as one of their common goals. However, they have a political interest in the matter rather than a legal or academic one. We think that for this goal a draft for a pirate like copyright, which is implementable in all European countries, is useful. Since the WITTEM group sees its draft as model for further development and we appreciate it as a modern and academicly highly sophisticated work we decided to build our own draft based on this.

[1] cf. *European copyright code* p. 5 – http://www.copyrightcode.eu

1.2 The Pirate Way of Copyright

While the work of the WITTEM group is scientificly good, the code itself is not suitable as a draft for a pirate copyright. The reason is the actual political premises the original code is build apon. The WITTEM group orients its work on the Bern convention[2] and the TRIPS agreement[3]. For the Pirate Parties however these international agreements are highly anachronistic and should not be preserved in their current form. Therefore, our draft for a copyright code focuses on the way copyright law should be in the information age not the way it has to be to satisfy the last milleniums international agreements.

We also want to experiment on the way to develop our own code with actually employing some aspects of the remix and open source culture. We therefore see this work as a remix of the original WITTEM code. We do not think about the code as completed paper but rather a developing idea like an actual open source project. We want to encourage interested people to draft their own remixes and contribute their ideas and remarks back to the Pirate Copyright Code.

We therefore give version numbers with each code. First tier version numbers always imply the implementation of so far neglected political goals. Second tier version numbers imply various corrections of the code itself on the basis of the currently regarded political goals.

1.3 Political Goals and Code Modifications

1.3.1 Political Goals for Version 1

For the first version we want to implement two major demands of the Pirate Party for a new copyright: free[4] private use and notably shorter copyright duration (at least for economic rights). The latter proved a bit tricky. Very short copyright duration as we had in mind is a problem for copyleft licensing like the GPL or the Creative Commons

[2] cf. `http://en.wikipedia.org/wiki/Berne_Convention_for_the_Protection_of_Literary_and_Artistic_Works`

[3] cf. `http://en.wikipedia.org/wiki/Agreement_on_Trade-Related_Aspects_of_Intellectual_Property_Rights`

[4] free as in “free speech” not as in “free beer”

licenses with the attribute “SA”. E.g. with a five year duration, proprietary software could build on five year old open source code without publishing its own code.

Since supporting free software (and implicitly other open content) is also part of the Pirate Party’s political platform we wanted to address that. We took up an idea mentioned by a few pirates and Richard M. Stallman, the founder of the free software foundation. It specifies that the duration of the economic rights of copyright on a work should depend on how many rights the author wants to monopolize for himself. That way free software would benefit from a maximum duration. We especially liked the idea, because it replaces the notion of “intellectual property”(sic!) with a notion of a commercial support law. The author can decide for himself if he wants to use this law with many privileged rights in a short amount of time or vice versa.

But again this brought up another problem. The actual copyright duration would depend on the license the work is published under, but a work could actually be published under many different licenses. We therefore need some kind of default license with all the required information. For this we implemented a copyright declaration which is necessary to claim copyright on a work. This again proved a lucky hit since we now implemented another demand of a lot of modern copyright supporters by making the public domain the default for each work.

Finally we thought about the practical implementation of the code. Since notably shorter duration of economic rights is hard to digest for many people, who have been raised with the old copyright notion. The image of a living author not benefiting from an exploitation of his work is still not acceptable for many. Therefore we used subsequent exploitation regulations for the case the economic rights expired with the author still living.

Private Use

Private use could be considered *the* core demand on copyright of the Pirate Party platform. In former times, notable copyright infringements have always appeared in public space, like unauthorised concerts or selling of unauthorised copies on flea markets. Nowadays copyright is abused to harass normal people because of their actions in their private space, especially file sharing. Even demands for further measures like “Three Strikes” or web censoring come up.

Copyright does not have to be abolished as a whole but it has to be made clear, that it is inferior to civil rights, especially privacy, which includes data traffic from or to a

computer in private use. Therefore copy right may not effect the private space. Note that private use does not only affect the right of reproduction but at least all economic rights. A private person must not be prosecuted because of singing a copyrighted song in the subway or translating a book for his or her personal use.

The most important question which has to be answered in this context is: What exactly qualifies as private use?

Let us first define commercial use. Commercial use is defined as every use that has the intention of generating *monetary profit* or aiding in the generation of monetary profit. It specifies that in commercial use the use of the work itself is not the primary objective, but the earning of money. Private use is then defined as the opposite of commercial use.

The Copyright Declaration

This is a major change to current copyright legislation and a break with the outdated international treaties. The current copyright is modeled after the interests of the people who want to claim the the rights granted by copyright. Therefore each work automatically has "all rights reserved". Authors who want to contribute to the public pool of culture and knowledge have to use special licenses like "Creative Commons" to do so. Furthermore these licenses have to include clauses which need the users of those works to mark them, for everyone to know that theses works are free, since otherwise they would have to assume the work has "all rights reserved".

The reason for this state of the copyright is the notion of "intellectual property", which can be falsified with proper property theory. The reason for establishing a copyright, is the quite selfish interest of the society to have new works. While the fulfillment of this need may be supported by establishing a copyright, the obstruction of authors who want to contribute to the freely available pool of culture and knowledge surely does not.

Therefore the public domain has to be the default for all works. To get copyright protection on a work the author has to file a copyright declaration. The open questions on this topic are:

- Which information is needed in the copyright declaration?
- How can the work be linked to the copyright declaration?

Let's start with the first question. Obviously the first piece of information needed, is the reference data of the work:

- title
- type of work
- author
- date of publishing

To anticipate the next section, there is also the need of choosing the claimed monopoly rights for the work.

- If the right to make derivative works is granted for free
- If the right of commercial use is granted for free
- If the author obliges to publish all his source material
- Special default restrictions of use (e.g. copyleft)

This way the copyright declaration also functions as a general license.

This brings us to the second question now. Since without the copyright declaration the work is public domain, we have to give the author a possibility to link his work to the delcaration. So for the work to be excluded form public domain, the work itself has to be marked with a copyright claim (i.e. in the work itself or in the meta data). This copyright claim has to be included with every distribution including private use distribution, removing it is illegal (this is best enforced with notice and takedown). The copyright declaration can than be published anywhere where it can be foud by everyone. While the best way to implement the latter might be a central copyright registration administration, this is an executive question, not a legislative and we therefore exclude it in this context.

Incremental Economic Rights Duration

The implementation of incremental economic rights duration follows the claimed monopoly rights of the former section. For a basic duration, we consider 5 years a good value, since private use is already granted by this code. The duration is extended with every not monopolized right. The granting of the first two rights "free derivative works" and "free commercial use" should give another 5 years each.

A special case ist the last item, the authors obligation to publish all his sources. We especially want to encourage the authors to do so, since public sources are not only a source for personal education, they enable the user to modifiy the work for his own personal use. A typsetted book can easily be converted to a digital reader format, software can be ported from one platform to another. We therefore want to grant another 10 years for this obligation.

The authors of some types of work, e.g. paintings, might find it very easy to fulfill this obligation, since the work is the source in itself. This also applies for many types of plain text. Some might argue that theses authors get the duration extension for free, but we should not harm those authors, who are not able to withhold their sources by default.

1.3.2 Code Modifications for Version 1

Private Use

For the implementation private use, we inserted a paragraph into Art. 15 (now Art. 15) which limits the economic rights to commercial use and defines commercial use.

Furthermore we had to remove Art. 23 (2) (now Art. 26), because the private reproduction mentioned in number *a* is now already granted. The educational use in number *b* is also already granted, if the educational use is not commercial. The corresponding references in Art. 27 (now Art. 30) and Art. 28 (now Art. 31) also had to be removed.

The Copyright Declaration

The idea is implemented in the new Art. 16.

Incremental Copyright Duration

The idea is implemented in the new Art. 16.

1.3.3 Political Goals for Version 2

Subsequent Exploitation

Incremental economic rights duration is accompanied by a reform of the length of economic rights duration itself and the starting point of its expiration. Unlike the TRIPS treaty this reform uncouples economic rights duration from the authors life time. This however leads to the situation, that a commercial exploitation during the life time of the author is possible without the author benefiting from it. This might lead to a deincentivation of the author which is contrary to the copyright's goal.

The most important point in short duration of economic rights is to give the work back into public domain (at least partially). This mainly means the author (resp. other holder of the economic rights) should not be allowed to exclude anyone from using his work anymore. Note that since private use is already granted, we talk about commercial use here. Between the expiration of the economic rights and the death of the author, we put the work into the state of subsequent exploitation. In this time period nobody needs to ask the author's permission to use the work in a commercial context anymore but is obliged to give a share of his revenue to the author. This share should be relatively small, so that the economic possibilities to use the work are considerably better than during the economic rights duration. A public authority should be entitled to define this minimum share. Collection of these shares could for example be handled by a collecting society.

Publicly Funded Works

A special case for copyright are publicly funded works. These include for example scientific works from a publicly funded university, maps created by local governments or TV productions of public broadcasting organizations. These works do not need incentives from copyright. Furthermore, using copyright (especially economic rights) to obstruct access to these works without reason is not only generally ethically questionable, but also cheating the public that funded it. For that reason we want to liberalize the use of publicly funded works completely, which means to except these works from economic rights.

For this purpose we need a good definition for publicly funded works. Some works might get subsidies from government agencies, but should not count as publicly funded works. Common sense suggests that at least 50% of the funding should come from

the public. Furthermore, since some public employees might try to circumvent this rule (e.g. a professor writing a text book and then publishing it privately) we want to especially include all works, which are created during the working hours and which are covered by the job description of public employees.

1.3.4 Code Modifications for Version 2

Subsequent Exploitation

The idea is implemented in the new Art. 23.

Publicly Funded Works

One option to implement publicly funded works into the code is using the article about claiming economic rights (here: Art. 16). Since we introduced that into the code in Version 1, all exceptions could be listed there. For the purpose of overview, we use the new Art. 17, which is based on the pattern of Art. 2.

2 The Code

Pirate Copyright Code - Version 2.0

2.1 Works

Art. 1 Works

(1) [1]Copyright subsists in a work, that is to say, any expression within the field of literature, art or science in so far as it constitutes its author's own intellectual creation.

(2) [1]The following in particular are regarded to be within the field of literature, art or science within the meaning of this article:

a. Written or spoken words,
b. Musical compositions,
c. Plays and choreographies,
d. Paintings, graphics, photographs and sculptures,
e. Films,
f. Industrial and architectural designs,
g. Computer programs,
h. Collections, compilations and databases.

(3) [1]The following are not, in themselves, to be regarded as expressions within the

field of literature, art or science within the meaning of this article:

a. Facts, discoveries, news and data;
b. Ideas and theories;
c. Procedures, methods of operation and mathematical concepts.

Art. 2 Excluded works

[1]The following works are not protected by copyright:

a. Official texts of a legislative, administrative and judicial nature, including international treaties, as well as official translations of such texts;
b. Official documents published by public authorities.

2.2 Authorship and Ownership

Art. 3 Authorship

[1]The author of a work is the natural person or group of natural persons who created it.

Art. 4 Moral rights

(1) [1]The author of the work has the moral rights.

(2) [1]Moral rights cannot be assigned.

Art. 5 Economic rights

(1) [1]The owner of the economic rights in a work is its author.

(2) [1]Subject to the restrictions of article 6, the economic rights in a work may be assigned, licensed and passed by inheritance, in whole or in part.

(3) [1]If the author has assigned economic rights, he shall nonetheless have a right to an adequate part of the remuneration on the basis of the provisions in articles 25, 26, 27 and 28.

(4) [1]An assignment is not valid unless it is made in writing.

Art. 6 Limits

[1]If the contract by which the author assigns or exclusively licenses the economic rights in his work does not adequately specify

a. the amount of the author's remuneration,
b. the geographical scope,
c. the mode of exploitation and
d. the duration of the grant,

the extent of the grant shall be determined in accordance with the purpose envisaged in making the grant.

Art. 7 Works made in the course of employment

[1]Unless otherwise agreed, the economic rights in a work created by the author in the execution of his duties or following instructions given by his employer are deemed to be assigned to the employer.

Art. 8 Works made on commission

[1]Unless otherwise agreed, the use of a work by the commissioner of that work is authorised to the extent necessary to achieve the purposes for which the commission was evidently made.

2.3 Moral Rights

Art. 9 General

[1]The moral rights in a work are the rights of divulgation, attribution and integrity, as provided for in articles 10, 11 and 12.

Art. 10 Right of divulgation

(1) [1]The right of divulgation is the right to decide whether, and how the work is disclosed for the first time.

(2) [1]This right shall last for the life of the author.

Art. 11 Right of attribution

(1) [1]The right of attribution comprises:

a. the right to be identified as the author, including the right to choose the manner of identification, and the right, if the author so decides, to remain unidentified.
b. the right to require that the name or title which the author has given to the work being indicated.

(2) [1]This right shall last for the life of the author and until [...] years after his death.[2]The legal successor as defined by the laws on inheritance is entitled to exercise the rights after the death of the author.

Art. 12 Right of integrity

(1) [1]The right of integrity is the right to object to any distortion, mutilation or other modification, or other derogatory action in relation to the work, which would be prejudicial to the honour or reputation of the author.

(2) [1]This right shall last for the life of the author and until [...] years after his death.[2]The legal successor as defined by the laws on inheritance shall be entitled to exercise the right after the death of the author.

Art. 13 Consent

[1]The author can consent not to exercise his moral rights. [2]Such consent must be limited in scope, unequivocal and informed.

Art. 14 Interests of third parties

(1) [1]The moral rights recognised in article 9 will not be enforced in situations where to do so would harm the legitimate interests of third parties to an extent which is manifestly disproportionate to the interests of the author.

(2) [1]After the author's death, the moral rights of attribution and integrity shall only be exercised in a manner that takes into account the interests in protecting the person of the deceased author, as well as the legitimate interests of third parties.

2.4 Economic Rights

Art. 15 General

(1) [1]The economic rights in a work are the exclusive rights to authorize or prohibit the reproduction, distribution, rental, communication to the public and adaptation of the work, in whole or in part, as provided for in articles 18, 19, 20, 21 and 22.

(2) [1]Economic rights apply to commercial use. Commercial use is every use that has the intention of generating monetary profit or aiding in the generation of monetary profit.

Art. 16 Claiming and duration of economic rights

(1) [1]In order to exercise economic rights, the author has to attach a copyright claim to the published work. [2]A corresponding copyright declaration has to be published within appropriate time.

(2) [1]The copyright declaration has to contain:

a. title
b. type of work
c. author
d. date of publishing
e. whether or not the right to freely make derivative works is granted
f. whether or not the right of free commercial use is granted
g. whether or not the author obliges to publish all his source material
h. special default conditions of use

(3) [1]Special default restrictions of use may not contradict other granted rights in the copyright declaration.

(4) [1]Commercial use of a work, which violates the author's correctly claimed and declared economic rights is to be ceased on the author's request.

(5) [1]Economic rights expire 5 years after the date of publishing. The duration extends

a. by 5 years if the right to freely make derivative works is granted
b. by 5 years if the right of free commercial use is granted
c. by 10 years if the author obliges to publish all his source material

Art. 17 Works excluded from claiming of economic rights

[1]Economic rights cannot be claimed for the following works:

a. works that are created during the working hours of a public employee
b. works that are created by a public employee, whose job description contains the creation of the same types of work as the work at hand
c. works that are directly publicly funded by more than 50%

Art. 18 Right of reproduction

[1]The right of reproduction is the right to reproduce the work in any manner or form, including temporary reproduction insofar as it has independent economic significance.

Art. 19 Right of distribution

(1) [1]The right of distribution is the right to distribute to the public the original of the work or copies thereof.

(2) [1]The right of distribution does not apply to the distribution of the original or any copy that has been put on the market by the holder of the copyright or with his consent.

Art. 20 Right of rental

(1) [1]The right of rental is the right to make available the original of the work or copies thereof for use for a limited period of time for profit making purposes.

(2) [1]The right of rental does not extend to the rental of buildings and works of applied art.

Art. 21 Right of communication to the public

(1) [1]The right of communication to the public is the right to communicate the work to the public, including but not limited to public performance, broadcasting, and making available to the public of the work in such a way that members of the public may access it from a place and at a time individually chosen by them.

(2) [1]A communication of a work shall be deemed to be to the public if it is intended for a plurality of persons, unless such persons are connected by personal relationship.

Art. 22 Right of adaptation

[1]The right of adaptation is the right to adapt, translate, arrange or otherwise alter the work.

Art. 23 Subsequent exploitation

(1) [1]Beginning from the expiration of formerly claimed and granted commercial rights until the author's death, the author is entitled to a minimum share of the profits generated by commercial exploitation of the work according to the formerly mentioned economic rights.

(2) [1]The height of the share is decided by the proper public authorities.

2.5 Limitations

Art. 24 Uses with minimal economic significance

[1]The following uses with minimal economic significance are permitted without authorisation, and without remuneration:

a. the making of a back-up copy of a work by a person having the right to use it and insofar as it is necessary for that use;
b. the incidental inclusion of a work in other material;
c. use in connection with the demonstration or repair of equipment, or the reconstruction of an original or a copy of a work.

Art. 25 Uses for the purpose of freedom of expression and information

(1) [1]The following uses for the purpose of freedom of expression and information are permitted without authorisation and without remuneration, to the extent justified by the purpose of the use:

a. use of a work for the purpose of the reporting of contemporary events;
b. use of published articles on current economic, political or religious topics or of similar works broadcasted by the media, provided that such use is not expressly reserved;

c. use of works of architecture or sculpture, made to be located permanently in public places;
d. use by way of quotation of lawfully disclosed works;
e. use for the purpose of caricature, parody or pastiche.

(2) [1]The following uses for the purpose of freedom of expression and information are permitted without authorisation, but only against payment of remuneration and to the extent justified by the purpose of the use:

a. use of single articles for purposes of internal reporting within an organisation;
b. use for purposes of scientific research.

Art. 26 Uses permitted to promote social, political and cultural objectives

[1]The following uses for the purpose of promoting social, political and cultural objectives are permitted without authorisation and without remuneration, and to the extent justified by the purpose of the use:

a. use for the benefit of persons with a disability, which is directly related to the disability and of a non-commercial nature;
b. use to ensure the proper performance of administrative, parliamentary or judicial proceedings or public security;
c. use for the purpose of non-commercial archiving by publicly accessible libraries, educational insitutions or museums, and archives.

Art. 27 Uses for the purpose of enhancing competition

(1) [1]The following uses for the purpose of enhancing competition are permitted without authorisation and without remuneration, to the extent justified by the purpose of the use:

a. use for the purpose of advertising public exhibitions or sales of artistic works or goods which have been lawfully put on the market;
b. use for the purpose of reverse engineering in order to obtain access to information, by a person entitled to use the work.

(2) [1]Uses of news articles, scientific works, industrial designs, computer programs and databases are permitted without authorisation, but only against payment of

a negotiated remuneration, and to the extent justified by the purpose of the use, provided that:

a. the use is indispensable to compete on a derivative market;
b. the owner of the copyright in the work has refused to license the use on reasonable terms, leading to the elimination of competition in the relevant market and
c. the use does not unreasonably prejudice the legitimate interests of the owner of the copyright in the work.

Art. 28 Further limitations

[1]Any other use that is comparable to the uses enumerated in articles 24 to 27 I is permitted provided that the corresponding requirements of the relevant limitation are met and the use does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author or right holder, taking account of the legitimate interests of third parties.

Art. 29 Relation with moral rights

(1) [1]Uses under this chapter are permitted without prejudice to the right of divulgation under article 10.

(2) [1]Uses pursuant to articles 25, 26, 27 and 28 are permitted without prejudice to the right of attribution under article 11, unless such attribution is not reasonably possible.

(3) [1]Uses pursuant to articles 24, 25, 26 and 28, are permitted without prejudice to the right of integrity under article 12, unless the applicable limitation allows for such an alteration or the alteration is reasonably due to the technique of reproduction or communication applied by the use.

Art. 30 Amount and collection of remuneration

(1) [1]Any remuneration provided for under this chapter shall be fair and adequate.

(2) [1]A claim for remuneration according to articles 25 II can only be exercised by a collecting society.

Art. 31 Limitations prevailing over technical measures

[1]In cases where the use of copyright protected works is controlled by technical measures, the right holder shall have an obligation to make available means of benefiting from the uses mentioned in articles 24 through 28 on condition that:

a. the beneficiary of the limitation has lawful access to the protected work,
b. the use of the work is not possible to the extent necessary to benefit from the limitation concerned, and
c. the right holder is not prevented from adopting adequate measures regarding the number of reproductions that can be made.