

# Licensing: legal issues and vocabulary. An Introduction.

ESWC 14'

Tutorial

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# Summary

- I Licensing

- One common example: sport material suppliers on the web (images and rights)
- Vocabulary: general legal terms, specific legal terms, theoretical terms

- II Software licenses

- Software licenses and legal issues (CC-OSI)
- Semantic Web Licenses Modeling (Digital Rights Modeling Technologies)

# I LICENSING

- ONE EXAMPLE: SPORT MATERIAL SUPPLIERS ON THE WEB (IMAGES AND RIGHTS)
- VOCABULARY: GENERAL LEGAL TERMS, SPECIFIC LEGAL TERMS, THEORETICAL TERMS

# LICENSING

- **Computer science:** Licensing is “the act of transferring limited *rights* to another party, under certain terms and conditions, for *use and reuse* of *content*” (from CS point of view, R. Iannella).
- **Law:** Licencing is a specific type of commercial *contract* between a licensor (owner or possessor of rights) and a licensee (who receives them) under certain *conditions* settled by the agreement under a mandatory national or international *law*.

# Two types of licenses from the CS point of view

- *Instant License assertions* (Creative Commons, OSI...)
- *Mediated License assertions* (Digital Rights Management, Right Expression Languages...)

# Let's put an example: roller hockey commercial supplies



# Roller Hockey Goalkeeper Pad (RHGK)



We warmly thank  
designer Jordi Poblet  
and JOST company to  
allow us using their  
work as use case!

Imagine you are going to  
commercialize RHGP...





# Marketing and advertising: proof of concept (designer: Jordi Poblet)



# Advertising: proof of concept ... and legal issues!





Personal image  
Professional image  
Commercial image  
Brand  
Rights holder (ownership)  
License (contract)  
Private domain  
Public domain  
Global domain

Can this flag, or its shape, form, colors... be used to shape a commercial good?  
And what about a non-commercial good?

Black - represents the  
Aboriginal people of  
Australia



Yellow circle - represents  
the sun, the giver of life and  
protector.

Red - represents the red earth and red  
ochre used in ceremonies and the Aboriginal  
people's spiritual relationship to the land

# Public domain vs. Official (administrative) domain

- Actually the Australian Aboriginal flag, although official since 1995 (proclamation), is NOT into the public domain but, under the Australian intellectual copyright law, it belongs to its creator, Aboriginal artist Harold Thomas (1971) since the Federal Court decision [http://www.austlii.edu.au/au/cases/cth/federal\\_ct/1997/215.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/1997/215.html)



# Harold Joseph Thomas v David George Brown & James Morrison Vallely Tennant [1997] FCA 215 (9 April 1997)

- “On 8 March 1996 Mr Thomas had filed an application in the Copyright Tribunal (No. CT 3 of 1996) in which he alleged that, during 1971, he created the artistic work for what has become known as the Aboriginal flag and was the owner of the copyright therein. The respondent to the application was the Commonwealth of Australia. Mr Thomas alleged that the Commonwealth had "done acts comprised in the copyright" in the artistic work for the services of the Commonwealth.
- The application was brought pursuant to the provisions of [s.183](#) of the [Copyright Act 1968](#) ("the Act"). That section provides that the copyright in a literary, dramatic, musical or artistic work or a published edition of such a work, is not infringed by the Commonwealth or a State or by a person authorised in writing by the Commonwealth or a State doing any acts comprised in the copyright if the acts are done for the services of the Commonwealth or State. Subsection 183(5) provides that, where an act comprised in a copyright has been done for the services of the Commonwealth or a State, the terms for the doing of the act are such terms as are, whether before or after the act is done, agreed between the Commonwealth or the State and the owner of the copyright or, in default of agreement, as are fixed by the Copyright Tribunal”.

# Susan Dorothea White

## The First Supper, 1988



# But...

- This legal status is only *valid* in the Australian territory, it doesn't hold for USA, e.g.
- Therefore, the answer to both questions is ...it depends upon the normative system you are going to apply and the rights you are going to manage (from sources including positive law, jurisdiction, Court decisions, commercial best practices, and ethical principles)
- What 'Law' means is sometimes a matter of balance between agents' practical interests and applicable norms, and sometimes a matter of tacit enforcement of legal norms, in a plurality of spaces with different (and sometimes competing) jurisdictions



# Issues (some more problems from the legal point of view!)

- Different regional, national, communitarian, international jurisdictions
- Different conception of jurisdiction and legal systems (e.g. Common law vs. Civil Law)
- Different conceptions of intellectual property
- Different procedural processes of conflict resolution
- Implicit and assumed application of each national legal system (sets of norms) to protect goods, companies, creative works...

# *General legal terms*

- Agreement
- Contract
- Rights
- Duties
- Private domain
- Public domain
- Jurisdiction
- Waiver
- Fallback...

# Specific legal terms on property

- Possession
- Property
- Intellectual property
- Author
- Work
- Ownership
- Copyright
- License
- Software licenses
- Trademark
- Trade secret
- Patent

# Concepts (legal theory)

- Definition
- Norm
- Legal (or valid) norm
- Normative system
- Normative model
- Normative effects
- Normative compliance
- Permission
- Prohibition
- Obligation
- Exception...

# Legal Reasoning and formal languages

- Normative logic
- Deontic logic
- Non-monotonic logic (defeasible reasoning)
- Defeasible deontic logic

# Classical conceptual schemes

## I. Hohfeld (1913, 1919)

TABLE OF CONTRADICTORIES

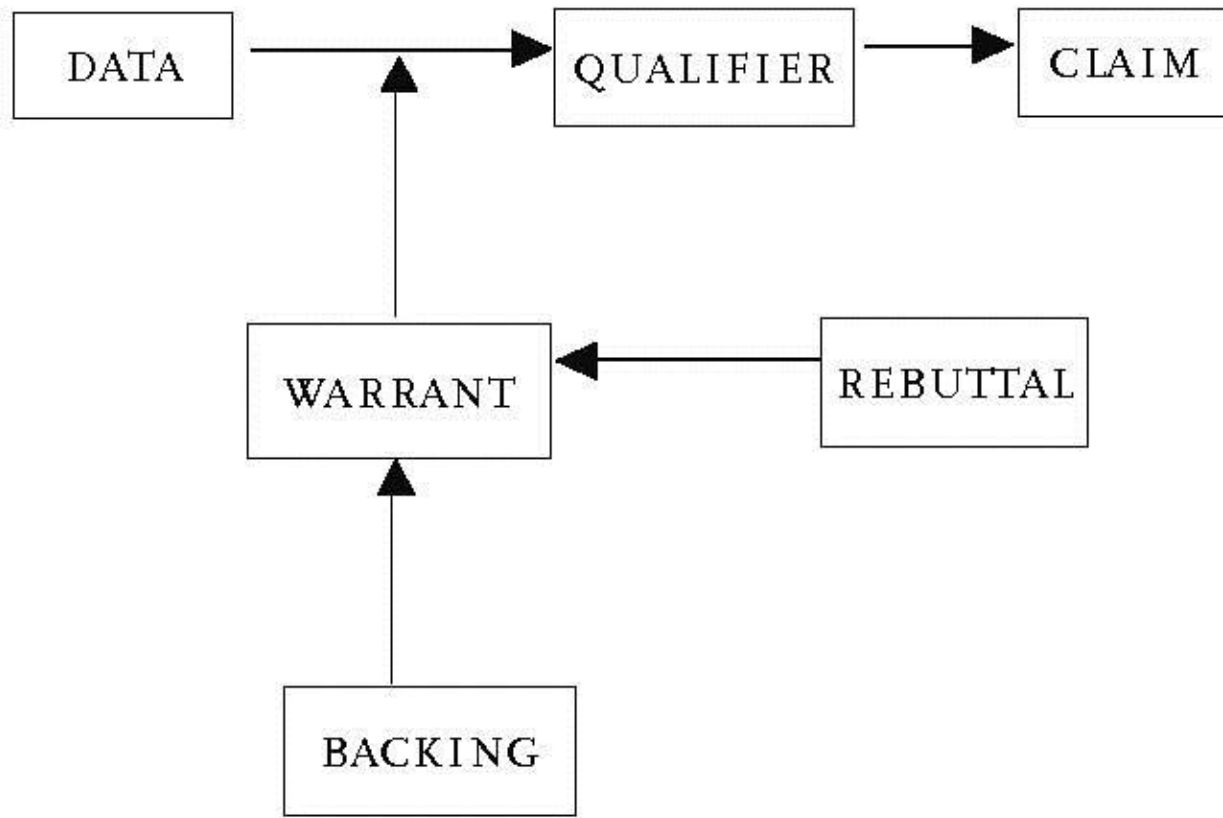
| <i>Jural Concepts</i> |            | <i>Non-Jural Concepts</i> |             |
|-----------------------|------------|---------------------------|-------------|
| Right                 | Power      | Liberty                   | Immunity    |
| No-right              | Disability | No liberty                | No-Immunity |

TABLE OF CORRELATIVES

| <i>Jural Concepts</i> |           | <i>Non-Jural Concepts</i> |          |
|-----------------------|-----------|---------------------------|----------|
| Right                 | Power     | Liberty                   | Immunity |
| Duty                  | Liability | None                      | None     |

# Classical Conceptual Schemes

## II. Toulmin's model (1958)



# Definition: License

<http://www.businessdictionary.com/definition/license.html>

- Revocable written (formal) or implied agreement by an authority or proprietor (the licensor) not to assert his or her right (for a specific period and under specified conditions) to prevent another party (the licensor) from engaging in certain activity that is normally forbidden (such as selling liquor or making copies of a copyrighted work). Intellectual property licenses generally mean that the licensor will not invoke ownership protection laws if the licensed property (art, design, patent, etc.) is copied, sold, or used by the licensee. A license is not a right, because the licensor may not have the legal power to give all necessary permissions that constitute a legal right. It is also not a lease, and is not assignable by the licensee. Also called permit.



# Definition: Exclusive license

<http://www.businessdictionary.com/definition/exclusive-license.html>

- License limited to a specific scope or field, such as context, market, territory, or time. 'Exclusive' does not mean 'one and only' license granted, but only that the licensor agrees not to grant other licenses that have the same rights within the scope or field covered by the exclusive license. It may refer to a geographical area, technological application, method of production, or production of a specific product. Exclusivity may or may not include competition from other licensees or the licensor itself, granting of sublicenses, performance requirements to be met by the licensee, and/or a time limitation. The licensor, in fact, can issue any number of licenses with different rights in the same scope, or licenses with same rights in different scopes. Under copyright law, the licensee of an exclusive license is the owner of a particular right out of several rights constituting a copyright. He or she has the legal power to take court action against anyone who infringes the licensed rights within his or her scope or field.

# Def. Non-Exclusive License

<http://www.businessdictionary.com/definition/non-exclusive-license.html>

- A license in which the same rights to an intellectual property granted to several licensees within the same scope or field, consecutively or simultaneously.

# Def. Sole proprietorship

<http://www.businessdictionary.com/article/42/what-is-a-sole-proprietorship/>

- As the name suggests, “sole proprietorship” refers to a business that is owned by a single owner and should not be confused with a corporation. There are no corporate taxes involved and the sole proprietor pays income tax on the profits generated. The person who organized the business pays personal income taxes on the profits made. This makes the accounting procedure relatively simple for the sole proprietor, who also enjoys complete autonomy in terms of making business decisions.
- Setting up a sole proprietorship is easy. One of the main steps is to obtain a local business license (a sales tax permit may also be required). For certain businesses, such as restaurants or legal practices, you may need additional local or state licenses. Legal regulations and licenses aside, there are other major factors to consider when setting up a sole proprietorship. You will have to create a business plan, develop marketing and advertising campaigns, set up a budget, and find ways to fund your business.

# II. SOFTWARE LICENSES

- SOFTWARE LICENSES AND LEGAL ISSUES (CC-OSI)
- SEMANTIC WEB LICENSES MODELING (DIGITAL RIGHTS MANAGEMENT TECHNOLOGIES)

# Free software (Shun-ling Chen, 2013)

- Free software is about granting users the freedom to run, copy, distribute, study, change and improve the software. Free software is any software that provided the following freedoms. The freedom to:
  1. Run the program, for any purpose (freedom 0).
  2. Study how the program works, and adapt it to your needs (freedom 1). Access to the source code is a precondition for this.
  3. Redistribute copies so you can help your neighbour (freedom 2).
  4. 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.

# 1. GNU vs OSI

- **Free Software Movement** has the goal of obtaining and guaranteeing certain freedoms for software users, namely the freedom to run the software, to study and change the software, and to redistribute copies with or without changes
- **GNU** (GNU's Not Unix, Richard Stallman 1983): users are free to run the software, share it (copy, distribute), study it and modify it. GNU software guarantees these freedom-rights legally (via its license), and is therefore free software; the use of the word "free" always being taken to refer to freedom
- <http://www.gnu.org/gnu/manifesto.html>



# Annotations to Open Source Definition

<http://opensource.org/osd-annotated>

- **1. Free Redistribution**
- **Rationale:** By constraining the license to require free redistribution, we eliminate the temptation for licensors to throw away many long-term gains to make short-term gains. If we didn't do this, there would be lots of pressure for cooperators to defect.
- **2. Source Code**
- **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**
- **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**
- **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**
- **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.



# Annotations to Open Source Definition

- **6. No Discrimination Against Fields of Endeavor**
- ***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**
- ***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**
- ***Rationale:** This clause forecloses yet another class of license traps.*
- **9. License Must Not Restrict Other Software**
- ***Rationale:** Distributors of open-source software have the right to make their own choices about their own software.*
- **10. License Must Be Technology-Neutral**
- ***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.*



## 2. Copyleft vs. Permissive Licenses

source: <http://opensource.org/faq#copyleft>

- "Copyleft" refers to licenses that allow derivative works but require them to use the same license as the original work. For example, if you write some software and release it under the [GNU General Public License](#) (a widely-used copyleft license), and then someone else modifies that software and distributes their modified version, the modified version must be licensed under the GNU GPL too — including any new code written specifically to go into the modified version
- A "permissive" license is simply a non-copyleft open source license — one that guarantees the freedoms to use, modify, and redistribute, but that permits proprietary derivative works

### 3. Creative commons (CC0) vs. Open Source (from: <http://opensource.org/faqm>)

- In February 2012, Creative Commons submitted CC0 to the OSI for approval as an open source license, requesting that the OSI evaluate the public license fallback section, since the rest of the text is a waiver of rights rather than a license. An unexpectedly intense and detailed discussion followed — search for "CC0" and "Creative Commons Zero" in the subject headers of the February 2012 and March 2012 archives of the OSI License Review mailing list.
- CC0 was not explicitly rejected, but the License Review Committee was unable to reach consensus that it should be approved, and Creative Commons eventually withdrew the application. The most serious of the concerns raised had to do with the effects of clause 4(a), which reads: "*No ... patent rights held by Affirmer are waived, abandoned, surrendered, licensed or otherwise affected by this document.*". While many open source licenses simply do not mention patents, it is exceedingly rare for open source licenses to explicitly disclaim any conveyance of patent rights, and the Committee felt that approving such a license would set a dangerous precedent, and possibly even weaken patent infringement defenses available to users of software released under CC0.

# <http://creativecommons.org/licenses/>

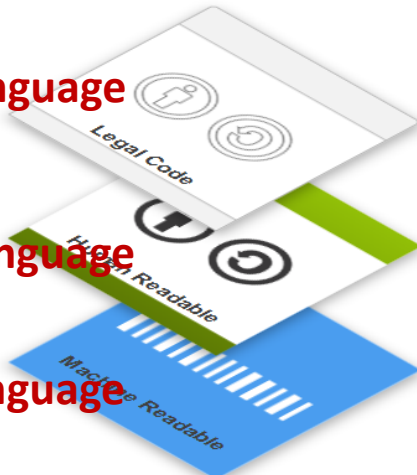
About The Licenses - Creative Commons - Mozilla Firefox

File Edit View History Bookmarks Tools Help

creativecommons.org/licenses/

mechanisms that (if chosen) helps the digital commons grow over time. ShareAlike is inspired by the GNU General Public License, used by many free and open source software projects.

## Three “Layers” Of Licenses



The diagram illustrates the three layers of Creative Commons licenses as three overlapping cards. The top card is white and labeled 'Legal Code' with a person icon and a circular arrow icon. The middle card is green and labeled 'Human Readable' with a person icon and a circular arrow icon. The bottom card is blue and labeled 'Machine Readable' with a barcode icon.

**Expert Language**

**Natural Language**

**Formal Language**

Our public copyright licenses incorporate a unique and innovative “three-layer” design. Each license begins as a traditional legal tool, in the kind of language and text formats that most lawyers know and love. We call this the Legal Code layer of each license.

But since most creators, educators, and scientists are not in fact lawyers, we also make the licenses available in a format that normal people can read — the Commons Deed (also known as the “human readable” version of the license). The Commons Deed is a handy reference for licensors and licensees, summarizing and expressing some of the most important terms and conditions. Think of the Commons Deed as a user-friendly interface to the Legal Code beneath, although the Deed itself is not a license, and its contents are not part of the Legal Code itself.

The final layer of the license design recognizes that software, from search engines to office productivity to music editing, plays an enormous role in the creation, copying, discovery, and distribution of works. In order to make it easy for the Web to know when a work is available under a Creative Commons license, we provide a “machine readable” version of the license — a summary of the key freedoms and obligations written into a format that software systems, search engines, and other kinds of technology can understand. We developed a standardized way to describe licenses that software can understand called [CC Rights Expression Language](#) (CC REL) to accomplish this.

Searching for open content is an important function enabled by our approach. You can use [Google](#) to search for Creative Commons content, look for pictures at [Flickr](#), albums at [Jamendo](#), and general media at [spinxpress](#). The [Wikimedia Commons](#), the multimedia repository of [Wikipedia](#), is a core user of our licenses as well.

Taken together, these three layers of licenses ensure that the spectrum of rights isn’t just a legal concept. It’s something that the creators of works can understand, their users can understand, and even the Web itself can understand.

## The Licenses

Attribution

Attribution ShareAlike

ES 4:03 23/04/2014

## 3.1. Legal issues: The “public domain” problem

- Creative Commons Zero is a legal device known as a "public domain dedication". It is essentially a statement of intent by the copyright holder to waive copyright ownership in the work — that is, the copyright holder wishes to place the work into the public domain.
- Because such a waiver is (perhaps surprisingly) not possible in all jurisdictions, CC0 also contains a "Public License Fallback" clause that goes into effect *"should any part of the Waiver for any reason be judged legally invalid or ineffective under applicable law"*. The fallback is essentially a copyright license that is very similar to an Open Source license, in that it gives up most of the restrictive powers associated with copyright, and allows redistribution and modification of the work.

## CC0 1.0 Universal (CC0 1.0) Public Domain Dedication

This is a human-readable summary of the [Legal Code \(read the full text\)](#).

[Disclaimer](#)

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- Source: <http://blog.okfn.org/2013/01/08/consequences-risks-and-side-effects-of-the-license-module-non-commercial-use-only-2/#sthash.fL1OMZ9q.dpuf>



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### 3. 3. Legal Issues: German Court Says Creative Commons 'Non-Commercial' Licenses Must Be Purely For Personal Use

- “Now a German court has weighed in on the subject, with interesting results [[Landgericht Köln hat in einem Urteil vom 5. März 2014 \(Az.: 28 O 232/13\)](#)]. The case concerned the use of a photo from Flickr, released under a CC-BY-NC license. The photo appeared on the Web site of Deutschlandradio, part of the German public broadcaster -- a non-commercial organization, that is. Alongside the photo, Deutschlandradio's Web site included the name of the artist, the license, and a link to its terms. Despite this, the photographer demanded 310 Euros plus costs on the grounds that Deutschlandradio had used the photo for commercial purposes.
- The public broadcaster pointed out that there was no charge for its Web site, there was no advertising, and no sponsorship. Nonetheless, the judge agreed it should be treated as a commercial use. In coming to this view, the judge drew on German law, which defined "non-commercial" as purely for personal use, and excluded all commercial use in the "generally accepted sense", and that apparently included radio stations, irrespective of how they were funded.
- [As this underlines, quite what "non-commercial" means is likely to vary from country to country, and possibly even judge to judge.](#) “
- Source: by [Glyn Moody](#), Thu, Mar 27th 2014:

# “Non-commercial meaning”

- *"Nach dem objektiven Erklärungswert ist unter der Bezeichnung "nicht kommerzielle Nutzung" eine rein private Nutzung zu verstehen.,,*
- After the declaration " non commercial use " can be understood as a purely private use.
- As this underlines, quite what "non-commercial" means is likely to vary from country to country, and possibly even judge to judge. “

## 4. Open-source compatible business approaches

- Dual licensing
- Software as a service (not charging for the software but for services)
- Freemium (donation-based funding)
- Crowdfunding

# Some examples OSL

- Apache License 2.0
- BSD 3-Clause "New" or "Revised" license
- BSD 2-Clause "Simplified" or "FreeBSD" license
- GNU General Public License (GPL)
- GNU Library or "Lesser" General Public License (LGPL)
- MIT license
- Mozilla Public License 2.0
- Common Development and Distribution License
- Eclipse Public License

## 5. Linked Data Licensing: Open Data

- Open Data is the application of many the same principles and philosophy as free and open source software and open content projects such as Creative Commons to Data and Databases.
- **Data ≠ Content ≠ Software**
- (Source: Jordan S. Hatcher, Co-founder Open Data Commons) Source:  
<http://www.slideshare.net/jordanhatcher/linked-data-licensing-introduction-isemantics-2010>

# Open Data Commons Licenses (OCD)

<http://opendatacommons.org/licenses/by/summary/>

- **You are free:**
- *To Share:* To copy, distribute and use the database.
- *To Create:* To produce works from the database.
- *To Adapt:* To modify, transform and build upon the database.
- **As long as you:**
- *Attribute:* You must attribute any public use of the database, or works produced from the database, in the manner specified in the license. For any use or redistribution of the database, or works produced from it, you must make clear to others the license of the database and keep intact any notices on the original database.

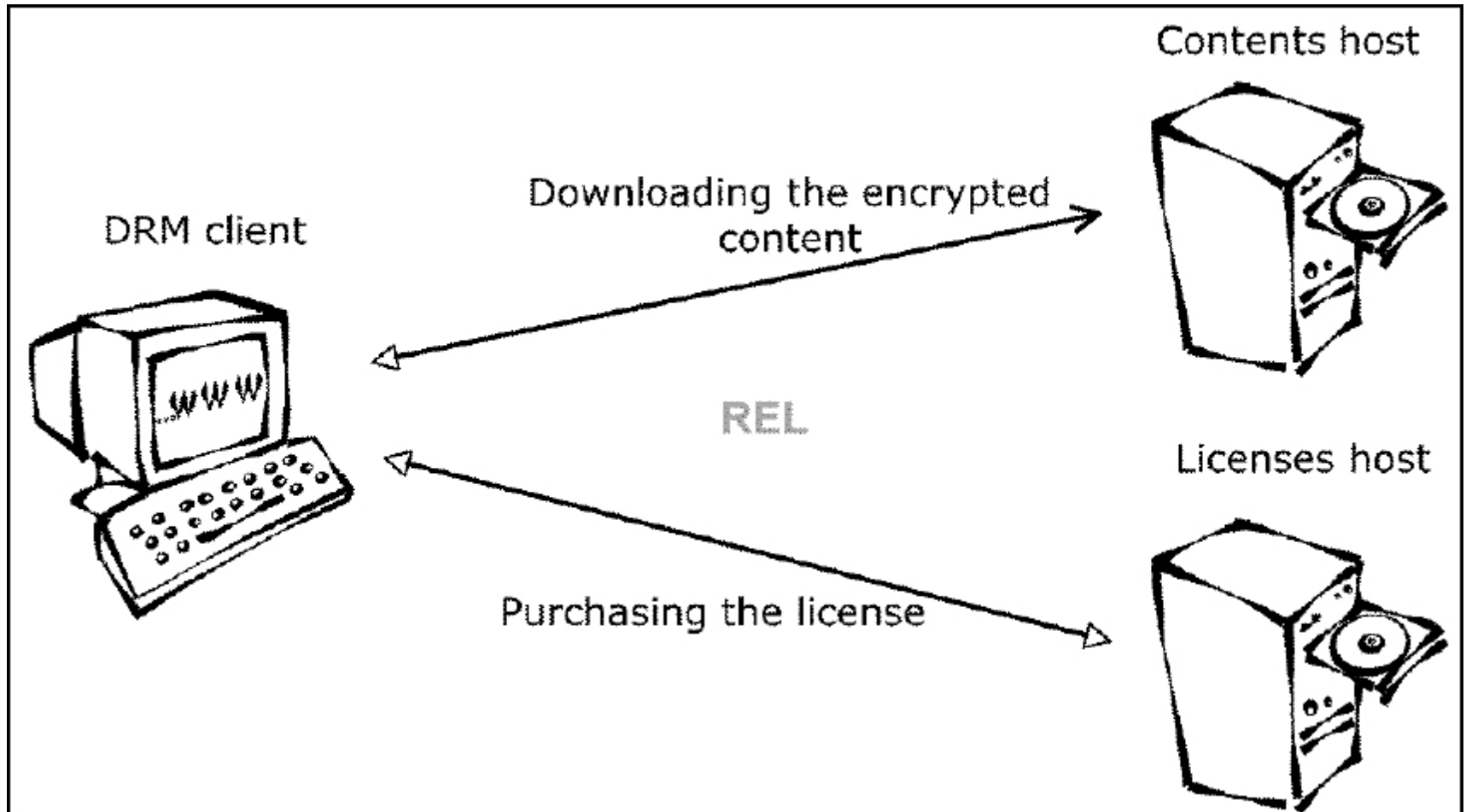
# Digital Rights Management Technologies

“Digital rights management (DRM) technologies covers the broad area of intellectual property management by providing secure and trusted services to control the use and distribution of content. DRM technologies consists of a mix of business models, social issues, legal conformance, and technical capabilities. This implies that DRM Technologies are an integral part of the entire end -to - end content management lifecycle, not just a single service that exists in isolation. Hence the key to successful DRM technologies is that it is not be seen as a separate “DRM system,” but as part of the overall content management and consumption framework.”

Renato Iannella <http://www.nicta.com.au/pub?doc=764>



# Digital Rights Management (DRM) systems to model Copyright



Source: Nadiah et al., "Licensing Digital Content With A Generic Ontology: Escaping From The Jungle of Rights Expression Languages" , JURIX 2007, June 4-8, Palo Alto, CA USA p. 65-69

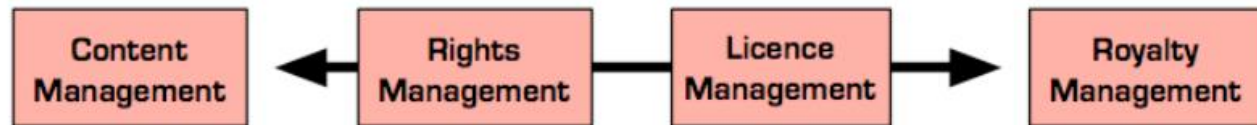
# Rights Management Functions

## Iannella, ibid.)

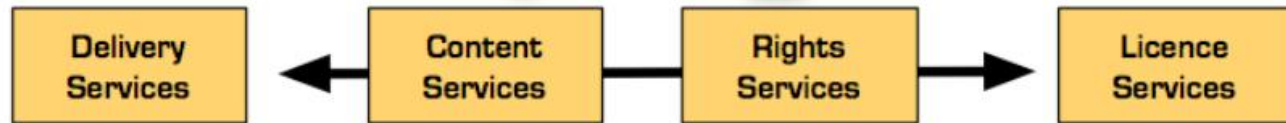
- The recording of rights holders of content and any existing terms of agreements.
- The creation of offers to consumers that include the terms and conditions for use of content.
- The creation of agreements (or contracts) for usage licenses to downstream users for content.
- Party and identity management of rights holders and end users.
- Reporting on license activity and disbursing revenue (e.g., royalties) for the usage of rights.

# Iannella: DRM Architecture

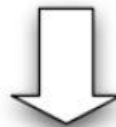
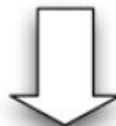
## Rights Holders



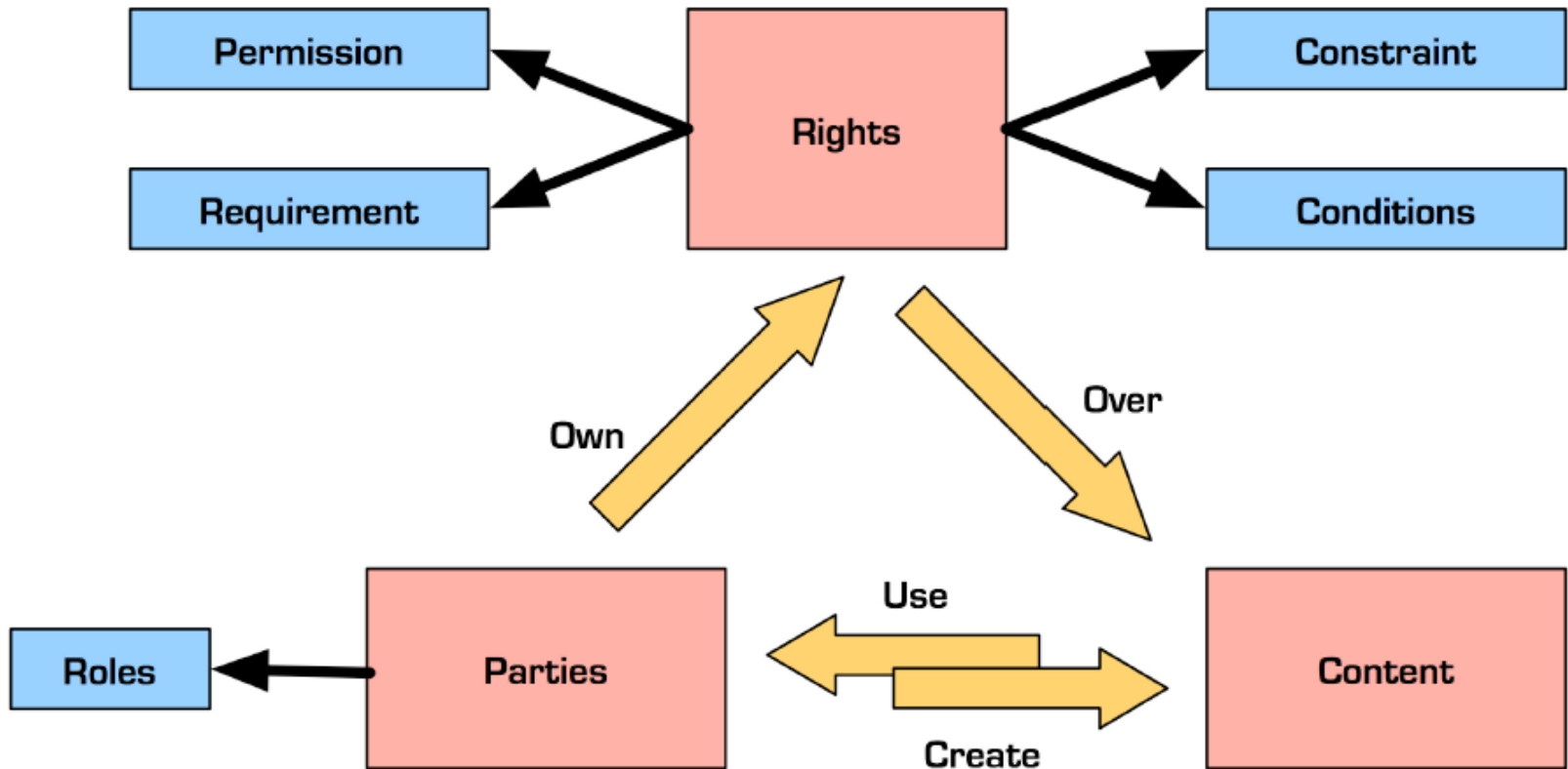
## Service Providers



## Consumers



# Iannella: DRM Information Model



# Rights Expression Languages (REL)

- Rights entity captures offers/agreements between parties and the content. REL model:
- Permissions (usages allowed over the content: play, print, sell...)
- Constraints (limits to permissions e.g. time-based restrictions...)
- Requirements (obligations needed to exercise the permissions, e.g. the need to have a valid credit card during the term of agreement )

# References

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