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Legal Aspects – Master on Free Software 2012-13

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FLOSSYSTEMS
Open Source Systems Engineering

Universidad
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Course Contents

- Lesson 0: Presentation of the Course
- Lesson 1: Intellectual Property: basic concepts and legal framework
- Lesson 2: Legal Aspects of Free/Open Source Software
- Lesson 3: Free/Open Source software licenses
- Lesson 4: Free licenses for other intellectual works
- Lesson 5: Case studies

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FSF approach
What is a free culture

Table of Contents

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What is a free culture

Free Licenses for other intellectual works

- FLOSS licenses have inspired licenses for other intellectual works: audio, video. . .
- Stallman distinguished between
  - functional works (documentation, encyclopedias, manuals, etc.),
  - non-functional works (literature, music, movies, etc.) to justify the use of restrictive clauses for works other than software.

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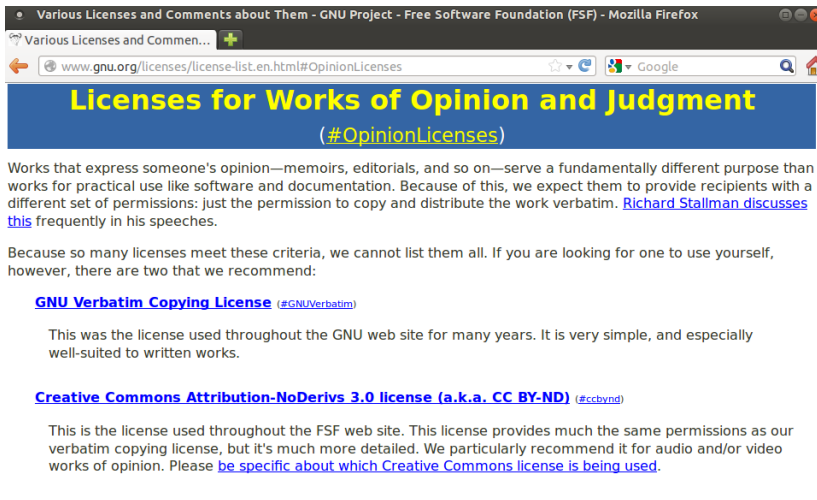
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FSF: Opinions and Judgments exceptions

- FSF recommends proprietary licenses for works of opinion (memoirs, editorials, and so on).
- Just the permission to copy and distribute the work verbatim.
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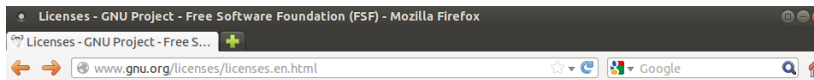
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Debate: Functional Works vs. non-functional Works

- *Discussion:* Is it true that non-functional works require less freedoms?

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Debate: Functional Works vs. non-functional Works

- *Discussion:* Is it true that non-functional works require less freedoms?

- Legitimation of non-commercial clauses? (and other restrictive clauses).

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GPL for documentation and non-software works?

GNU General Public License (#GPLOther)

The GNU GPL **can** be used for general data which is not software, as long as one can determine what the definition of "source code" refers to in the particular case. As it turns out, the DSL (see below) also requires that you determine what the "source code" is, using approximately the same definition that the GPL uses.

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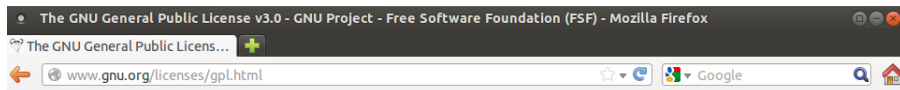
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What is a free culture? (1)

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What is a free culture? (1)

- "Free culture" as in "free speech", "free markets", "free trade", "free enterprise", "free will" and "free elections" (not related to free as gratis).
- A free culture supports and protects creators and innovators: it's the traditional way our culture is built.

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What is a free culture? (and 2)

- A free culture is NOT a culture without property, just as a free market is not a market in which everything is free (gratis).
- The opposite of a free culture is a "permission culture" –a culture in which creators get to create only with the permission of the holder, or of creators from the past (Lawrence Lessig's view).

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FSF approach
What is a free culture

Controversy about definition of free cultural works

- Freedom Defined: There isn't free culture without the right to make derivative works or commercial uses.

- Lax use: accepting limitations to modify works or to trade with them.

"Freedom Defined": free cultural works

- It's not a new license, but an initiative to provide a definition of free outside of the software world to end the ambiguity of the term in the Free Culture movement.
- CC fails to establish a "base level of freedom" (Mako Hill)
- A Debian developer proposal (Mako Hill): reached consensus over a draft with the community, the FSF and CC.
- It's an adaptation of the four essential freedoms of Free Software.
- Author's rights not in dispute: only getting knowledge of which licenses (and works) do or do not fit the definition of free.

"Freedom Defined": Definition of Freedom

By freedom we mean:

- the freedom to use the work and enjoy the benefits of using it
- the freedom to study the work and to apply knowledge acquired from it
- the freedom to make and redistribute copies, in whole or in part, of the information or expression
- the freedom to make changes and improvements, and to distribute derivative works

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Defining Free Cultural Works

These are the additional conditions in order for a work to be considered free:

- Availability of source data (score of a musical composition, the models used in a 3D scene, the data of a scientific publication, the source code of a computer application, or any other such information)
- Use of a free format (no patents)
- No technical restrictions
- No other restrictions or limitations: The work itself must not be covered by legal restrictions (patents, contracts, etc.) or limitations which would impede the 4 freedoms.

Identifying Free Cultural Works

Whenever the user of a work cannot legally or practically exercise his basic freedoms, the work cannot be considered and should not be called "free". So:

- Non-commercial restrictions are non-free licenses.
- No derivative restrictions are non-free licenses.
- Non-Commercial Share-alike Is Not Copyleft: Copyleft is a reversal of copyright. It restores and protects the rights that copyright removes. The rights, not *some* rights.
- "Open Content" and "Open Access" are not a clear definition of freedom.

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- Causes?

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If every author is holder of his/her edition, how could Wikipedia be relicensed?

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How could Wikipedia be relicensed?

- A community referendum in April 2009.
- GFDL 1.2 "or any later version" clause
- At request of the Wikimedia Foundation, FSF released a new GFDL version (1.3), designed specifically to allow relicense Wikipedia content as CC by-sa.
- Conflict with art. 14.1 LPI? ("corresponden al autor los siguientes derechos irrenunciables e inalienables: 1. Decidir si su obra ha de ser divulgada y en qué forma").

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- Avoids ambiguity with "source code" and "compile" in the context of documentation.

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- Maintain some rights:
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Before licensing

- Make sure your work is copyrightable
- Make sure you have the rights
- Make sure you understand how Creative Commons licenses operate (non-revocable, etc.)
- Be specific about what you are licensing
- Are you a member of a collecting society?

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Creative Commons: Simplicity

Why CC is so popular:

- Simple web tool
- We only have to answer basic questions like: "Allow commercial uses? Allow modifications?"

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3. Attribution + No Derivate Works (by-nd)
4. Attribution + share alike (by-sa)
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- CC recommends to use available licenses from the free/open source software world.
- CC has "wrapped" some free software/open source licenses (BSD, GPL and LGPL) with a human-readable "Commons Deed" and machine-readable metadata ("three-layer packaging").
- It is important to note that CC has not altered these software licenses in any way.
- GPL and LGPL includes a Portuguese translation (job made for Brazilian government).

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- Wikia (cc-by-sa, since June 2009). A free web hosting service for wikis
- Citizendium (cc-by-sa). Wiki-based Encyclopedia.
- knol (mostly, cc-by-sa or cc-by-nc-sa). A Google project that aims to include user-written articles on a range of topics
- Arduino (cc-by-sa). A single-board microcontroller and a software suite for programming it.
- NINJAM (cc-by-sa). A mechanism for exchanging audio data across the internet.

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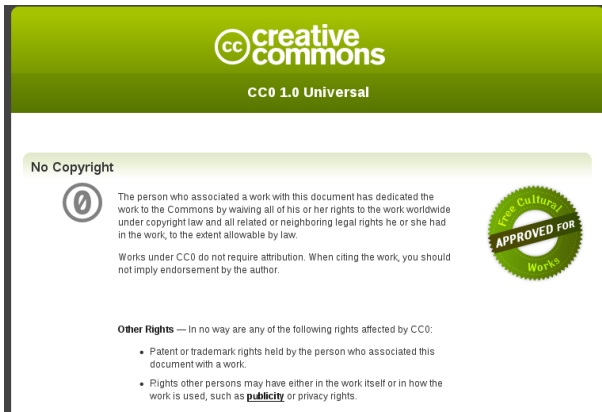Debian Guidelines and Creative Commons Licenses

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What does it mean non-commercial?

Non-commercial clause

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The "non-commercial" clause (1/3)

- It is frequently used, particularly in blogs and social sites, and it is now being adopted by some institutions.

- They are believed to protect the work against abusive use and opportunists (reselling or commercial exploitation by corporations, etc.).

- It is sometimes supported by alleging that protects investment (though some studies have challenged this view, since it restricts distribution).

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The "non-commercial" clause (2/3)

It raises evil side effects:

- This clause does not distinguish between indirect commercial uses, self-funded projects, etc.

- It brings uncertainty about what is a commercial activity: when in doubt you might decide not to use it to avoid demands or consulting lawyers...

- Incompatibility with libre projects (i.e. Wikipedia).

- Causing confusion about the "free" concept: it promotes another kind of opportunism, by using viral marketing to create the impression that a work is free but not truly releasing it as a libre product.

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The "non-commercial" clause (3/3)

- The author's right to decide the terms in which he shares his work is not at stake here.

- What it is rejected is the confusion and the subterfuge of presenting a work as a free product when it is not true.

- Use any license you like, but also use concepts with accuracy: do not label as *free/libre* or *copyleft* what it is not. Confusion damages free culture and benefit opportunists.

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Debian Guidelines and Creative Commons Licenses

Table of Contents

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Freedom Defined
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The "non-commercial" clause
Debian Guidelines and Creative Commons Licenses

Debian-legal and CC

After the popularization of CC, Debian-legal warned of Attribution provisions. The causes were:

- A work under Attribution can be in fact, NoDerivs
- Downstream users remove an author's credit upon request from the author.
- Inaccurate or excessive authorship credits.
- Problems with Anti-DRM provisions (which could restrict private redistribution to some extent).
- Trademark restrictions.
- Attribution[-ShareAlike] 2.x is NOT compatible with DFSG.
- Efforts to fix these problems in the new version 3.0 licenses.

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CC Attribution Problems (II): Authorship credits

- Requirements for crediting Licensor for his/her work: it's ambiguous
- So, we need the most pessimistic interpretation:
    - Required attribution for the licensor everywhere that authorship credit is given.

Example 1: *If a work is a collection of essays by different authors, with authorship credit given in the chapter titles, the Licensor's name would have to be listed for each chapter title, even if they did not contribute to it.*

Example 2: *If Alice writes her autobiography, and includes lyrics from Bob's song in one chapter, she must give him credit for the entire work: "The Autobiography of Alice, by Alice and Bob", or even "The Autobiography of Alice and Bob."*

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CC Attribution Problems (III)

- Anti-DRM Clause: Distribution with measures to control access is not compatible with DFSG 1.

Example 1: Private distribution of work might be forbidden.
Example 2: Distribution in a server with control access (i.e. firewall) might be forbidden.

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CC NoDerivs clause problems

Obviously, NoDerivs licenses are not
compatible with Four Freedoms (nor DFSG)

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In short: Debian recommendations to authors

- All software licensed under CC 2.x is NOT compatible with DFSG.
- CC 3.x has fixed several of these problems.
- Software licensed under NonCommercial/NoDerivs can't be named "Free Software".
- Authors who wish to use Attribution must use other licenses as BSD.
- Authors who wish to use Attribution-ShareAlike must use other licenses as GFDL.

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