Open licenses

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Open licenses ?

- License ?
  - authorisation to do something with a protected work
- Open ?
  - A broad autorisation (with emphasis on « freedom »)
  - Generally for free (but not necessarily)
  - But not totally without conditions/restrictions…
- AKA : « CopyLeft » license
  - as opposed to « CopyRight »
  - but is based on copyright…

Copyright – Object

- "*Literary and artistic works*" (article 1 Copyright Act)
- No definition
- Non-exhaustive enumeration in Berne Convention:

  "The expression 'literary and artistic works' shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions …; cinematographic works …; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works …; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science."
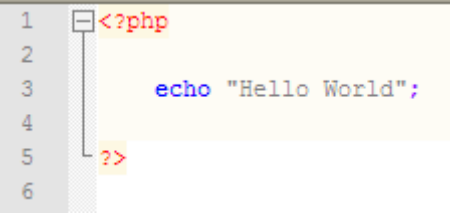
Copyright – Conditions of protection

- Originality

  - « *copyright is liable to apply only in relation to subject-matter which is orginal in the sense that is the <u>author's own intellectual creation</u>* » (ECJ, 16 July 2009, C-5/08, *Infopaq*)

  - Your own creation means :

    - You did not copy someone else

    - When creating your work, you made some « creative » choices

    - Concept of « free choice » (not dictated by technical constrains)

Copyright – Conditions of protection

```
/**
 * Simple HelloButton() method.
 * @version 1.0
 * @author john doe <doe.j@example.com>
 */
HelloButton()
{
  JButton hello = new JButton( "Hello, wor
  hello.addActionListener( new HelloBtnList

  // use the JFrame type until support for t
  // new component is finished
  JFrame frame = new JFrame( "Hello Button"
  Container pane = frame.getContentPane();
  pane.add( hello );
  frame.pack();
  frame.show();            // display the fra
}
```
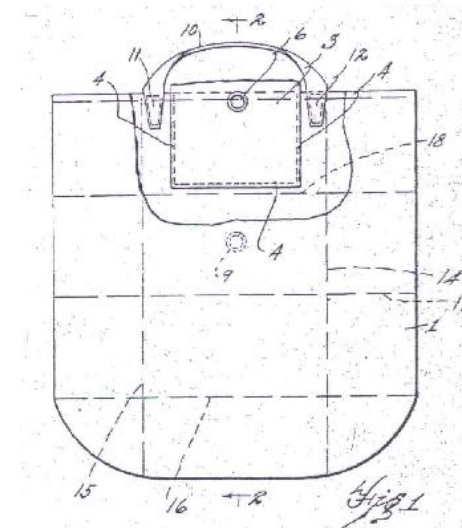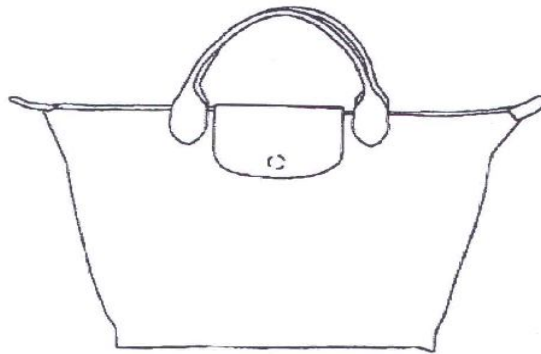
```
1  <?php
2
3      echo "Hello World";
4
5  ?>
6
```

YES   NO

Copyright – Conditions of protection

- Expression
  - No protection for ideas
    - Only original expression

Copyright – Conditions of protection

- Expression
  - Only code, no functionalities
    - functionalities are not an expression of a computer program (CJEU, C-406/10 of 2 mai 2012)

Copyright – Conditions of protection

- ## No formalities

  - No registration required

  - I-depot : not required (not even useful)

  - Date of creation : mere stamp or email is sufficient

  - © name, date : not required (but useful)

Copyright – which rights?

- Moral rights (paternity & integrity)

- Economic rights:

  - Right to authorise or prohibit reproduction

  - Right to authorise or prohibit communication to the public

  - Right to authorise or prohibit distribution

Copyright – which rights?

- Not only <u>identical</u> copies of the <u>whole</u> work
  - Part of work
  - "7 differences rule" is not a legal rule !
  - Derivative works: adapatations, translations, …

Copyright – which rights?

- 70 years *post mortem* author
  - (Art. 2, § 1 Copyright Act)
- Very few "truly" public domain works (of course, no software)

Open license

- **Essential Freedoms**

    - Free Software Fundation (FSF) :

        - The freedom to run the program, for any purpose (freedom 0).

        - The freedom to study how the program works, and change it so it does your computing as you wish (freedom 1), incl access to the source code;

        - The freedom to redistribute copies (freedom 2).

        - The freedom to distribute copies of your modified versions to others (freedom 3).

    - Open Source Initiative (OSI) :

        - 11 freedoms

        - List of all « OSI-Compliant » licenses

Open license

- But also obligations :
  - « Academic licences » : A lot of freedom and only few soft obligations
  - Examples : BSD, MIT, APACHE
    - must retain the copyright notice, this list of conditions and the following disclaimer.
    - may not use the name of the authors
    - Disclaimer of warranty

Open license

- BSD-3 license

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

  - Redistributions of source code must retain the above copyright notice, this list of conditions and the following disclaimer.

  - 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.

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Open license

- But also obligations :
  - « Reciprocal licences » :
  - A lot of freedom and one more strong obligation
  - Examples : GNU General Public License (GPL)
  - *"You must cause any work that you distribute or publish, that in whole or in part contains or is derived from the Program or any part thereof, to be licensed as a whole at no charge to all third parties under the terms of this License. (Section 2.)"*

Open license

- But also obligations :

  - Referred to as the « viral effect »

  - Or the « copyleft » obligation

  - May create « compatibility issues » :

    - How to combine two works that are both distributed under a license which has a strong « copyleft obligation » (not possible to distribute it under the two licenses at the same time)

Open license

- But also obligations :

  - Weaker « copyleft obligation » : mere « combination » does not necessarily trigger the obligation (ie allows the work to be linked with or used by a another program)

    - Mozilla Public License (MPL)

    - GNU Lesser General Public License (LGPL)

Open license

- But always possible:

  - « Dual licensing » :

    - Ask the copyright owner to have another license, without obligations

    - The author will charge you for this other license

  - Example : Mysql

    - "*Oracle provides its MySQL database server and MySQL Client Libraries under a dual license model designed to meet the development and distribution needs of both commercial distributors (such as OEMs, ISVs and VARs) and open source projects.* "

Open license

- **But always possible:**

  - Make a money for services :

    - Obligation to give access to modified source code « free of charge » is only if you publish or redistribute it

    - You can charge service fees for making a customization

    - Then, you must give the source code to the client, who will enjoy the freedoms of the GPL (and will be free to redistribute the customized version, if he wishes to)

    - No obligation to redistribute !

Open license

- But always possible:
  - Make a money for download:
    - You may even charge for a download of a modified work (provided that you give access to source code and include the license)
    - But you cannot prevent your first customer from distributing it for free if he wishes to do so…

Open license

- But always possible:
  - Copyleft does not apply if you only use it and do not redistribute it or publish it
    - You can keep your customizations for yourself

Legal battels in the EU

- Harald Welte v. Sitecom [Landgericht Munchen I - 19 mai 2004, Az. 21 O 6123/04]:

  - Netfilter/iptables : software firewall (included in Linux)

  - Sitecom : wi-fi router which contains Netfilter/iptables

Legal battels in the EU

- Violation of sections 2 et 3 GPL V2 :

    - No mention that it includes Netfilter/iptables (neither modification)

    - No reference to GPL V2

    - No distribution of the complete source code

Legal battels in the EU

- Section 4 GPLv2 : "*Any attempt otherwise to copy, modify, sublicense or distribute the Program is void, and will automatically terminate your rights under this License.*"

- If you do not comply…

    → no license

    → so copyright infringement !

Legal battels in the EU

- Injunction :

  - *« Sitecom may not distribute and/or copy and/or make available to the public the software "netfilter/iptables" without at the same time – in accordance with the license conditions of the GNU General Public License, Version 2 (GPL) – making reference to the licensing under the GPL and attaching the license text of the GPL as well as making available the source code of the software "netfilter/ iptables free of any license fee. »*

Legal battels in the EU

- Création de gpl-violations.org

- *"By June 2006, the project has hit the magic "100 cases finished" mark, at an exciting equal "100% legal success" mark. Every GPL infringement that we started to enforce was resolved in a legal success, either in-court or out of court."*

Legal battels in the EU

- Sample court victories :

  - Landgericht Munchen I, 12 avril 2005, Az. 2-6 O 224/06 (H. Welte v. Fortinet UK)

  - Landgericht Berlin, 16 février 2006, Az. 16 O 134/06 (WLAN-Router)

  - Landgericht Frankfurt I, 9 septembre 2006 (H. Welte v. D-Link)

  - Landgericht Munchen I, 12 juillet 2007 (H. Welte v. Skype)

    - *"If a publisher wants to publish a book of an author that wants his book only to be published in a green envelope, then that might seem odd to you, but still you will have to do it as long as you want to publish the book and have no other agreement in place."*

Legal battels in the EU

- Not only by the « authors »

- CA Paris, 16 septembre 2009, EDU4

  - Public grant for educational tools with software

  - Includes open source software « VNC » (GPL v2)

  - During Acceptance procedure, GPL conditions were not fulfilled

  - Grant annulled !

Considérant qu'il résulte de l'ensemble de ces éléments que la société EDU 4 a manqué à ses obligations contractuelles en livrant en décembre 2001, date à laquelle devait s'apprécier sa conformité, un produit, d'une part qui présentait pour les utilisateurs des EOF des risques d'atteinte à la vie privée, d'autre part qui ne satisfaisait pas aux termes de la licence GNU GPL puisque la société EDU 4 avait fait disparaître les copyrights d'origine de VNC sur les propriétés de deux fichiers en les remplaçant par les siens et avait supprimé le texte de la licence;

Considérant en conséquence, que l'AFPA est bien fondée, par application de l'article 1184 du code civil, en sa demande en résolution du marché; que la recette de la première phase n'étant pas intervenue, la société EDU 4 ne peut obtenir paiement de son prix; que sa demande en dommages-intérêts est mal fondée;

Legal battels in the EU

- Civ. Nivelles, 26 octobre 2010
  (Lichôdmapwa v. Théâtre de Spa)

  - *"En sa qualité de professionnel de l'organisation de festivals, la défenderesse devait à tout le moins s'infonner sur les conditions particulières de la licence."*

  - 3 conditions breached
    - Attribution : 1500 EUR
    - No Derivative (share alike) : 1500 EUR
    - No Commercial : 1500 EUR

This license is the most restrictive of our six main licenses, only allowing others to download your works and share them with others as long as they credit you, but they can't change them in any way or use them commercially.

http://creativecommons.org/licenses/

Open license ARE NOT

- Public domain works:
    - Very few
    - But you can do whatever you want

- Works available for free (eg freeware, shareware)
    - Free is not open
    - Open is not necessarily free

- Works under « Royalty-Free » License
    - « stock - photography »
    - Royalty free >< open (>< free)
    - Picscout

Conclusions

- Most of what you find on the internet will be protected by copyright

- Free does not mean open

- Many different licences :

    - Read carefully the license and

    - check if the license is « compliant » with open definition (www.osi.org)

- Respect the conditions

- If you cannot / do not want :

    - Ask for a different license

    - Or, reivent the wheel

Conclusions

- For those who are interested :

    - Open source book licensed under Open license :

        - Open Source Licensing - Software Freedom and Intellectual Property Law, by Lawrence Rosen with a foreword by Lawrence Lessig

        - http://www.rosenlaw.com/oslbook.htm

        - available online under the Academic Free License version 3.0