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Open Licenses

BetaGroup

29 January 2014
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The nut and bolt has innumerable uses in countless industries, providing fundamental structure and strength. It's amazing how just one simple connection can be the basis for a successful relationship.

Q : Why reinvent the wheel ?

A : Because it might be protected...

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Open licenses ?

- You need a license to re-use a protected work
- 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…
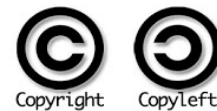
Copyright – Object

- "*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 – Object

- **Books**

Copyright – Object

- **Speeches**

I have a dream that one day the red hill of Georgia, sons of former slaves and sons of former slave-owners will be able to sit down together at the table of brotherhood.

I have a dream that one day, even the state of Mississippi, a state sweltering with the heat of injustice, sweltering with the heat of oppression, will be transformed into an oasis of freedom and justice.

I have a dream my four children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character. I have a dream today"

(M. L. KING, Lincoln Memorial, Washington D.C., August 28, 1963)

Copyright – Object

- 'characters'
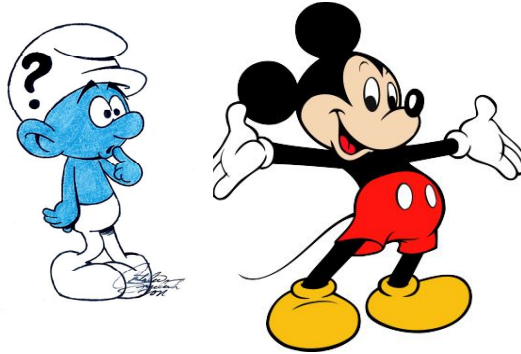
Copyright – Object

- Paintings

Copyright – Object

- **Sculptures**

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Copyright – Object

- **Photographic works**

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Copyright – Object

- **Cinematographic works**

Copyright – Object

- **Musical works**

Copyright – Object

• **Fashion**

Copyright – Object

• Industrial design

Copyright – Object

- Software

Autodesk

```
/**
 * 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
}
```

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Copyright – Condition for 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 (not dictated by technical constrains)

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Copyright – Condition for protection

© Etienne Tordoir published on Weekend.be
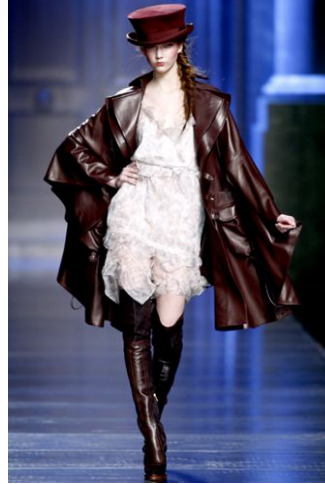
© Xavier Raoux published on MarieClaire.fr

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Copyright – Condition for protection

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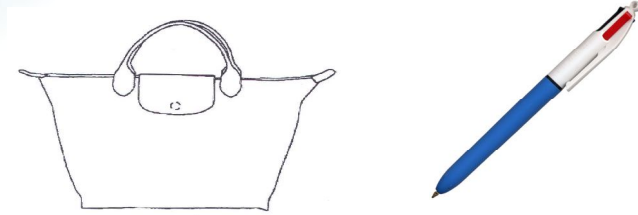
```
1  <?php
2
3       echo "Hello World";
4
5  ?>
6
```

YES   NO

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Copyright – Condition for protection

- Expression
  - No protection for ideas
    - Only original expression

Copyright – Condition for protection

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

Copyright – Condition for 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)

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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

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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, …
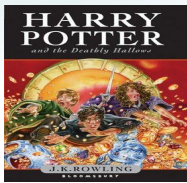
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Copyright – which rights?

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

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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

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Open license

- « 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

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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

Libre qu'ils disaient ...

- « 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.)"*

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Open license

- GPL
  - 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)

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Open license

- 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)

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Open license

Libre qu'ils disaient ...

- Other types of obligations may exist:
  - No commercial use
  - Credit the author
  - Only redistribute but do not change
  - Etc...

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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

netfilter
firewalling, NAT, and packet mangling for linux

SITECOM
EXPANDING POSSIBILITIES

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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

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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 !

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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, (H. Welte v. Fortinet UK)

  - Landgericht Berlin, 16 février 2006, (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."*

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Legal battels in the EU

- Latest case :

  - Landgericht Hamburg, 14 June 2013 (H. Welte v. Fantec)

  - FANTEC was using the netfilter/iptables software in one of the FANTEC 3DFHDL firmwares.

  - Distribution without complete corresponding source code

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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;

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Legal battels in the EU

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

  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/

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

  – 3 conditions breached

    - Attribution : 1500 EUR

    - No Derivative (share alike) : 1500 EUR

    - No Commercial : 1500 EUR

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Open license ARE NOT

– Public domain works:

- Very few

- But you can do whatever you want

– Works under « Royalty-Free » License

- « stock - photography »

- Royalty free >< open (>< free)

- Picscout

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Open license ARE NOT

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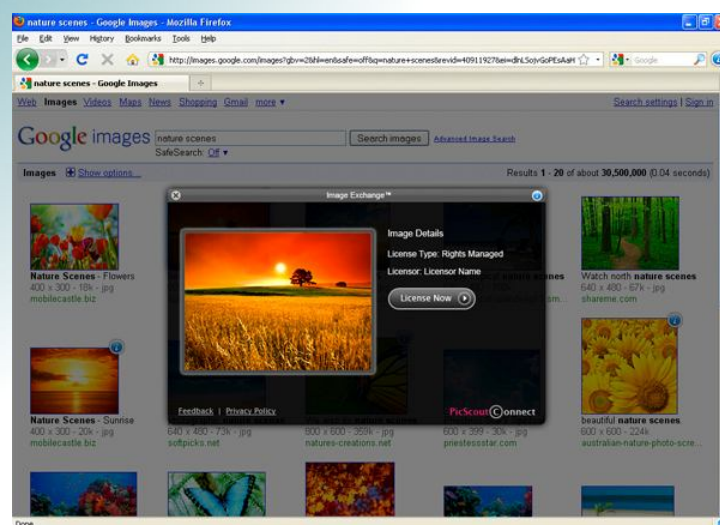
Conclusions

- Most of what you find on the internet will be protected by copyright
- Free does not mean open
- Open does not mean without any restrictions…
- 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 YOUR OWN wheel

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