

INF5780 Compendium Autumn 2015:

Open Source, Open Collaboration and Innovation



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Frontpage Image

“Hiking in the Norwegian Mountains”; acrylic painting by Wolfgang Leister; © 1995, image licensed CC BY-NC-ND.

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Abstract

This document is the compendium for the course *INF5780: Open source, open collaboration and innovation* at the Department of Informatics, University of Oslo, written for the autumn semester of 2015. This multi-disciplinary compendium presents aspects of commons-based peer production, free and open source software, open licenses, open standards, and how to extract value from these phenomena in open innovation and business models.

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Preface

This is the compendium for the course *INF5780: Open source, open collaboration and innovation*¹ at the Department of Informatics, University of Oslo. Written for the autumn semester of 2015, and based on work from previous courses, it is still work in progress. The main theme is the study of various communities participating in open collaboration on the Internet. This large and diverse field is still under rapid development with high degrees of creativity and innovation. It is multidisciplinary including the role of technology, legal issues, cultural aspects, business, markets, and public institutions.

The course was established in 2008 and is now in its seventh year. We thank Prodromos Tsiavos for his help in setting up the course initially with its emphasis on the concept of Commons-Based Peer Production (CBPP). Students who participated previously in the courses have provided valuable contributions. We also thank Karthik Jayaraman, who was a doctoral researcher at the University of Oslo, for contributions to this course. For further improvements and updates we depend on close interactions with a community of students and others who are interested in this area. The authors thank Michel Bauwens and Odd Kleiva for discussions and inspiring lectures. The authors are also grateful to Trenton Schulz for valuable comments and proofreading of the manuscript.

In our own work, we prefer Free and Open Source Software (FOSS) when this offers good solutions. In that spirit, this compendium is edited using the typesetting system \LaTeX , the text editor Emacs, the Linux operating system, the mindmapping software vwm, the diagram software dia, and several others.

The compendium is licenced under a Creative Commons Attribution - Non-Commercial - ShareAlike 3.0 licence (CC-BY-NC-SA)². This is the same licence as used by, e.g., MIT for its Open courseware³. Briefly, this means that the content can be used freely by anyone for non-commercial purposes, provided attribution is given. In addition, any material based on or derived from this compendium must also be released under the same licence.

Oslo, August 2015

Wolfgang Leister

Nils Christophersen

1. See <http://www.uio.no/studier/emner/matnat/ifi/INF5780/>; accessed Aug, 2015.

2. See <http://creativecommons.org/>; accessed July 25, 2011 and also the Norwegian Creative Commons <http://creativecommons.no>; accessed July 25, 2011.

3. See <http://www.ocw.mit.edu/terms/>; accessed July 25, 2011.

1 Introduction



Everything that can be represented as digital files, can now, given sufficient bandwidth, be distributed and shared on the Internet. In addition, search engines make it possible to discover and retrieve material of interest from what is, effectively, an immense and chaotic library. A striking phenomenon – often denoted as Web 2.0 – is the degree to which many people have taken advantage of this potential by becoming participants and producers instead of being only consumers. The term *prosumer*, coined early by futurologist Alvin Toffler (1980), aptly describes this new mode of participation in contrast to consumers in the traditional *one-to-many* mass media era¹.

Web 2.0, characterised by user-generated content provided voluntarily and free of charge, has given individuals unprecedented possibilities to express themselves to a global audience and taken participation and collaboration between people to new levels. With the low transaction and coordination costs offered by web communities, people participate and collaborate in communities of all kinds, from socialising on Facebook to contributing to large and complex projects within Free and Open Source Software (FOSS).

Looking at the current picture, it is clear that this opening of communication, constant involvement, and interchange on a large scale have set in motion several disruptive phenomena and led to innovation that would have been unexpected from a conventional viewpoint, where the leading roles of formal organisations, experts, and professionals are taken for granted. New developments within many, if not most, areas of society are providing rich grounds for interdisciplinary studies and research. Many established paradigms in the social sciences relating to human collaboration and how innovation occurs have to be reconsidered in the light of what is taking place.

Internet-based communication and cooperation take place within the sphere of *social media*. Kaplan and Haenlein (2010) group this area into six broad and overlapping categories: (1) collaborative projects such as FOSS and *Wikipedia*, (2) blogs and microblogs such as *Twitter*, (3) content communities such as *Youtube*, (4) social networking sites such as *Facebook*, (5) virtual game worlds such as *World of Warcraft*, and (6) virtual social worlds such as *Second Life*. With our emphasis on open source, the focus of this course is the first category – collaborative projects.

1. Note, however, that a so-called participation inequality typically holds for Internet communities – in relative terms most people still only view and do not contribute, cf. Chapter 2 and Chapter 3. However, with the massive number of people on-line, the absolute number of contributors is often huge.

Posing challenges from traditional points of view, much work has been devoted to studying this phenomenon on a more general and theoretical basis. One of the first to do so was the legal scholar Yochai Benkler (2002), who coined the term *Commons-Based Peer Production* (CBPP). This term relates to communities consisting of peers, i.e., people working together voluntarily without a formally imposed organisation or hierarchy, which produce a shared resource – a commons² – open to everyone free of charge. A commons may generally be defined as a resource or good shared by a group of people that may be subject to social dilemmas such as competition for use, free riding and over-exploitation (Ostrom, 1990). Its main original meanings relate to shared natural resources in traditional societies, e.g., grazing fields and fishing rights, and to communal meeting places, e.g., the Boston commons park and US town halls, but is now also applied to the wholly different domain of shared resources on the Inter-

net. As a term for open and free information and knowledge, it can also be applied to the world’s scientific knowledge, although this body of knowledge has not traditionally been denoted as a *commons*. However, scientific knowledge has been created through processes very similar to CBPP as we will consider in more detail later. In fact, there is a connection here, since FOSS as well as the Internet itself originated within scientific engineering communities with a tradition for open sharing and collaboration.

FOSS has provided inspiration and been a kind of role model for much of the current Internet-based collaboration. FOSS is radically different from so-called *proprietary software* provided by commercial vendors. There are thousands of FOSS projects and some of these (e.g. the GNU/Linux operating system and the Apache web server software) are large, innovative, and hugely significant within the software field. The FOSS source code is freely available for anyone to download, and people are encouraged to do just that. This contrasts sharply with commercial software, where the users are only provided with the computer-readable, binary code, and instructions for how to use it.



Image: Wikimedia Commons, Public Domain

Figure 1.1. Yochai Benkler at the Wikimania conference 2011. In the background a slide of his latest book *The Penguin and the Leviathan* (Benkler, 2011).

2. “Commons” is an awkward word in English being the same in both plural and singular forms. The Norwegian term is “allmenning”; see <http://no.wikipedia.org/wiki/Allmenning> while the German term is “Allmende”; see <http://de.wikipedia.org/wiki/Allmende>.

There are several important questions relating to CBPP communities such as: Why will volunteers from all over the world jointly produce, create, and innovate, even if often relatively few may know each other personally? Furthermore, how do such diverse groups self-organise to produce very complex products that are both free of charge and, in some cases, better and more innovative than similar commercial products, thus beating established businesses at their own game? Such questions again pose puzzles from traditional management and economic standpoints where the underlying assumption is that goods and services of economic significance are either produced by companies in a market or provided by the government or other public institutions. CBPP, on the other hand, is part of the so-called *gift economy*³ where goods and services are provided voluntarily without expectations of any immediate monetary or other type of compensation.

There is now a huge literature on FOSS, CBPP and related phenomena such as how established organisations and companies may utilise the potential of Internet communities through e.g. crowdsourcing, where a task or a problem is posted open for anyone to contribute. Good repositories for scientific papers are the DBLP computer science bibliography⁴ and the Digital Library of the Commons at Indiana University⁵. Books with more comprehensive and accessible treatments include Lessig (2004) about free culture, Howe (2008) about crowdsourcing, von Hippel (2005) about democratising innovation, Chesbrough (2003) about open innovation, Surowiecki (2004) about “the wisdom of crowds”, Tapscott and Williams (2006) about “wikinomics”, Leadbeater (2008) about “we-think”, Shirky (2010) about “cognitive surplus”, and Nielsen (2012) about “reinventing discovery” - how science can gain from Internet-based communities. The *Foundation for P2P Alternatives* or the *p2pfoundation*⁶ is one site that promotes peer production and hosts a large amount of material and lists hundreds of CBPP projects within software, media, production of physical goods, and other areas.

The above books as well as the *p2pfoundation* all give optimistic treatments of the potential of the Internet and Internet communities. There is indeed much to be excited about, but, on the other hand, there are darker views on that matter. To maintain a balance we mention books by Zittrain (2008) (*The future of the Internet – and how to stop it*), Carr (2010) (*The Shallows: What the Internet is doing to our brains*), Wu (2010) (*The Master Switch: The rise and fall of information empires*), and Morozov (2011) (*The Net Delusion: How not to liberate the world*). These texts discuss how the freedom of the Internet is threatened by large commercial actors, how it can be used for tight surveillance and control of individuals, and how it can make us all more superficial and, simply, dumber. Serious normative issues require discussions of which values should be promoted by technological as well as legal frameworks. So far, such discussions are not explicitly part of this compendium, although it should be clear that our position is on the side of continued freedom and against restrictions and limitations introduced for commercial or political reasons.

3. See http://en.wikipedia.org/wiki/Gift_economy; accessed August 29, 2011.

4. See <http://www.informatik.uni-trier.de/~ley/db/>; accessed August 2, 2011.

5. See <http://ldlc.dlib.indiana.edu/dlc/>; accessed August 2, 2011.

6. See http://p2pfoundation.net/The_Foundation_for_P2P_Alternatives; accessed August 2, 2011 .

Organisation of this compendium

In Chapter 2, we describe some CBPP and crowdsourcing projects to show typical characteristics and indicate the existing diversity and experimentation. As we will consider later, there is no clear distinction between CBPP and crowdsourcing. But the latter will typically involve a stricter and not peer-based hierarchy where the *crowdsourcer* (*requester or seeker*) posts a task or problem open to anyone to contribute as a *solver*. In addition to FOSS, we treat Wikipedia, OpenStreetMap, work within genealogy, volunteer computing, so-called *geocaching*, and open source hardware.

Chapter 3 explores the phenomena of CBPP and crowdsourcing in a broader context building in particular on work by Benkler (2002, 2007); Hess and Ostrom (2007); Ostrom (2005), and Weber (2004). CBPP is compared with the traditional ways goods and services are produced – in markets or by public institutions. Long-standing questions in established economical and political debates relate to the relative roles of the market versus the public sector. What should the market produce and what should be the responsibility of the public sector? With CBPP as a third and prominent mode of production as emphasised by Benkler, new questions arise as to how this mode will relate to the established domains.

Further in Chapter 3, we explain the difference between traditional commons and knowledge commons. In this context, it is important to note that traditional commons, relating to natural resources, with seemingly good reasons have been considered fringe phenomena in the modern market-oriented economy. This concept was almost discredited⁷ until Elinor Ostrom and coworkers showed that under certain conditions this mode of organisation can indeed be very effective for local communities to manage natural resources⁸.

Intellectual Property Rights (IPR) is a hotly contested area, not least regarding patents and copyright which play crucial roles in the market economy.⁹ Copyright and licences (i.e., specially designed forms of copyright terms) are briefly considered in Chapter 3 with more material on FOSS licenses in Section 4.3, and the Creative Commons and licenses for other content and goods in Chapter 5.

Looking at FOSS in Chapter 4, we take a non-technical approach meaning that skills in coding are not required for this course. Instead, we give a more thorough exposition of the history of FOSS, the particular ways FOSS communities are organised and work, the use of licences and main areas of applications. Business models for FOSS are also considered. Although the source code is freely available, there are several ways in which one can earn money based on FOSS. Further, we treat the issue of quality assessment of FOSS in some depth. With the code being freely available without warranty, the question of quality is a concern. Other issues and concerns regarding FOSS are briefly listed.

7. The phrase “tragedy of the commons”, coined by Hardin (1968), and explained in Chapter 3 comes to mind.

8. Elinor Ostrom received the economics Price in the memory of Alfred Nobel in 2009 for her work.

9. Some people, for example Richard Stallman (2002) in the Free Software Foundation, discard the term IPR altogether. Since this is not property in a conventional sense but time-limited monopolies granted creators by society before the creation becomes freely available to all, Stallman argues against the use of “property”.

While licenses for FOSS already are discussed in Chapter 4, we look closer into open licensing for other content and goods in Chapter 5. The Creative Commons Licenses for content, the open licenses for data and databases, licenses for public sector data, hardware licenses as well as the more radical equity-based licenses are considered. Chapter 6 shows a case study of how openness is use for public data in Norway.

Chapter 7 continues with how open licenses contribute to create value beyond monetary value. We discuss value, regulation, models of flows of value, content and permissions, and rights management. Open Standards are an important issue for FOSS and open innovation in general. Chapter 8 presents definitions of what open standards and open formats are, and discusses their roles. We also consider the role of open standards in the public sector.

As mentioned in the preface, this compendium is work in progress, and we are aware that subjects such as normative issues should be included, while others need further elaboration. Despite this, we offer a fairly broad text book containing important areas in a world dominated by the Internet¹⁰. Hopefully, our course is of interest to a wide range of students from disciplines beyond computer science. It is our experience that although students are proficient Internet users and participate in various online communities, many lack a deeper understanding of underlying central issues. Where we might have been too superficial or not clear enough, one can always explore the issues further on the *Net* itself.

References

- Yochai Benkler. Coase's Penguin, or, Linux and The Nature of the Firm. *Yale Law Journal*, 112:369–446, 2002.
- Yochai Benkler. *The Wealth of Networks*. Yale University Press, October 2007. ISBN 0300125771, 9780300125771.
- Yochai Benkler. *The Penguin and the Leviathan: How Cooperation Triumphs over Self-Interest*. Crown Business, 1 edition, August 2011. ISBN 0385525761.
- Nicholas Carr. *The Shallows: What the Internet is doing to our brains*. W.W. Norton, 2010. ISBN 978-0-393-07222-8.
- Henry Chesbrough. *Open Innovation: The New Imperative for Creating And Profiting from Technology*. Harvard University Press, 2003.
- G. Hardin. The tragedy of the commons. *Science*, 162(3859):1243–48, 1968.
- Charlotte Hess and Elinor Ostrom. *Introduction: An Overview of the Knowledge Commons, In Understanding Knowledge as a Commons*. MIT Press, 2007. ISBN 0-262-08357-4.
- Jeff Howe. *Crowdsourcing: Why the Power of the Crowd Is Driving the Future of Business*. Crown Business, first edition, August 2008. ISBN 0307396207.

10. We are not aware of many similarly broad courses elsewhere, except the course given at UC Berkeley; see <http://www.ischool.berkeley.edu/courses/290-cbpb>; accessed June 8, 2011.

- Andreas M. Kaplan and Michael Haenlein. Users of the world, unite! the challenges and opportunities of social media. *Business Horizons*, 53(1):59–68, 2010. ISSN 0007-6813.
- Charles Leadbeater. *We-think: Mass innovation, not mass production: The Power of Mass Creativity*. Profile Books, illustrated edition edition, February 2008. ISBN 1861978928.
- Lawrence Lessig. *Free Culture: The nature of and future of creativity*. Penguin, 2004. ISBN 1-59420-006-8.
- Evgeny Morozov. *The Net Delusion: How not to liberate the world*. Allen Lane, 2011. ISBN 978-1-846-14353-3.
- Michael Nielsen. *Reinventing discovery*. Princeton University Press, 2012. ISBN 978-0-691-14890-8.
- Elinor Ostrom. *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge University Press, 1990. ISBN 0521405998.
- Elinor Ostrom. *Understanding Institutional Diversity*. Princeton University Press, 2005. ISBN 0691122385.
- Clay Shirky. *Cognitive surplus, creativity and generosity in a connected age*. Penguin books, 2010. ISBN 978-1-846-14218-5.
- Richard M. Stallman. *Free Software, Free Society: Selected Essays of Richard M. Stallman*. GNU Press, Boston, Massachusetts, 2002.
- James Surowiecki. *The wisdom of crowds: why the many are smarter than the few and how collective wisdom shapes business, economies, societies, and nations*. Doubleday, 2004. ISBN 9780385503860.
- Don Tapscott and Anthony D. Williams. *Wikinomics: How Mass Collaboration Changes Everything*. Portfolio Hardcover, first edition Tenth Printing edition, December 2006. ISBN 1591841380.
- Alvin Toffler. *The Third Wave*. Bantam Books, 1980. ISBN 0-517-32719-8.
- Eric von Hippel. *Democratizing Innovation*. MIT Press, 2005. ISBN 0262002744, 9780262002745.
- Steven Weber. *The Success of Open Source*. Harvard University Press, April 2004. ISBN 0674012925.
- Tim Wu. *The Master Switch: The rise and fall of information empires*. A. A. Knopf, 2010. ISBN 978-0-307-26993-5.
- Jonathan Zittrain. *The future of the Internet - and how to stop it*. Allan Lane, 2008. ISBN 978-1-846-14014-3.

2 Examples of Commons-Based Peer Production and Crowdsourcing



by Nils Christophersen and Wolfgang Leister

In the following sections, we highlight some CBPP and crowdsourcing projects to point out common characteristics and to indicate the existing diversity and creativity. Considering CBPP, many such projects are listed by the *Foundation for P2P Alternatives*, or the *p2pfoundation*¹ which hosts a large amount of material and lists hundreds of projects in various stages, some successful and some not. Given the large diversity, it is not surprising that the quality and usefulness of many projects can be questioned. An enthusiastic founding group alone is no guarantee for a project to be successful. Other factors are crucial, such as internal organisation of the community, ideas, resources, external support and funding — and a good portion of luck. Some of the example projects we have chosen are highly successful and well known, while others are less so.

As a reference, we start by giving an informal list characterising CBPP projects, partly based on Benkler (2002). This will be further elaborated on in Chapter 3.

1. *Projects*. The project should be non-profit and driven by a community where the members volunteer in participating, all sharing a common goal or vision. Specially designed copyright licences regulate how the product can be used, and access be secured. Further, the project must be *modular* so that different participants can work in parallel. The possible set of tasks should require a range of different skills from the very simple to the more complex and time consuming.
2. *Peers*. The community members select for themselves what they want to do. A project with widely different tasks will provide incentives to a diverse community of people with a range of interests and motivation.

The members are recognised solely by their contributions to the project and not through external factors such as wealth, power, or formal education. An informal hierarchy, called a *meritocracy*, may develop on this basis where the senior members have earned their trust and authority through merit, i.e., through their contributions to the community. Such a hierarchy may develop naturally since Internet communities typically exhibit what is known as the *participation inequality*². This means that only a small fraction of the participants creates most of the content.

1. See http://p2pfoundation.net/The_Foundation_for_P2P_Alternatives; accessed August 4, 2010.
2. See <http://en.wikipedia.org/wiki/90-9-1>; accessed August 4, 2010.

3. *Integration.* Integration is carried out through the Internet with low communication and organisation costs using tools such as wikis, version control systems, and mailing lists.

The sense of community and commons is central to participants in a CBPP project. To qualify as CBPP, the community must be an informal, self-governing meritocracy where one can rise in esteem and responsibility through contributions to the project which is open and non-profit. As noted, crowdsourcing, on the other hand, involves a crowdsourcer (an individual or group, a non-profit, or a company) that broadcasts a task or problem where anyone can choose to participate as a solver. If this is for profit³ or a competition for a price⁴ it is clearly not CBPP. However, if it is non-profit and open such as contributing to a scientific project⁵ or pro bono, the value and sense of community can be stronger and it is closer to CBPP.

2.1 Free and Open Source Software

Free and Open Source Software (FOSS) is the most well-known CBPP phenomenon. We will treat FOSS, its history, culture, legal licences, quality metrics, opportunities and challenges in Chapter 4. Here, we present some introductory observations.

FOSS, originating as a concept in the mid-1980s, is now a pervasive phenomenon. For example, one of the main Internet sites hosting FOSS projects, Sourceforge⁶, held, as of July 2012, more than 324 000 projects with more than 3.4 million registered users. Many of these projects are small, inactive, or not very professional. However, the numbers, taken together with those of other sites, indicate a significant global phenomenon. FOSS flagships include the GNU/Linux operating system, the Apache web server software, the MySQL database, the Firefox web browser, the OpenOffice office suite, and many others.

The basic idea of FOSS is that the computer source code should be available for inspection, modification, and redistribution for everybody. This contrasts with proprietary software where the users are only given access to the binary, computer readable code. With the source code open, anyone can read and adapt it. Successful FOSS projects attract a critical mass of active voluntary developers with different skills and interests; some provide inputs ranging from simple bug reports and translations to substantial patches, while others take care of design, testing, and integration. Disputes and disagreements are frequent. These are often resolved through mediation by senior members or through some kind of voting procedures. At any time, someone may legally take the source code and start a competing project creating a so-called fork, but interestingly enough this is not frequent.

3. See for example <http://aws.amazon.com/mturk/>; accessed July 13, 2012 or <http://www.jana.com/>; accessed July 13, 2012.

4. See <http://www.innocentive.com/>; accessed July 13, 2012.

5. See for example <http://www.sdss.org/>; accessed July 13, 2012 and <http://polymathprojects.org/>; accessed July 13, 2012.

6. See Sourceforge.net; accessed July 11, 2012.

FOSS includes a diverse set of communities crowding around two main camps: *free software* vs. *open source* – differing on ideological and philosophical grounds. The Free Software Foundation (FSF)⁷, established by Richard M. Stallman in 1985 as a reaction to increased commercialisation of software at the time, emphasises a philosophy of freedom (Stallman, 2002). Stallman worked at MIT in a scientific engineering environment where software used to be freely shared, and he has committed himself to this cause. In his opinion, no one should be able to use ownership of software to exclude others from it; every holder of the code should have the freedom to share it with others (if he or she wants so) but not necessarily at zero price. In Stallman’s words, think of *free* as in *free speech*, not *free beer*. Thus you can, in principle, offer free software to the market for any price you choose, but in practise this is zero, which is the effective cost of Internet distribution. However, Stallman considers consulting as a different matter, which has been an important source of income for him over the years.



Image © Wikimedia Foundation, CC BY-SA

Figure 2.1. Richard Stallman in Oslo in 2009 as Saint GNUcius (saint in the Church of Emacs)

Copyright of software was legally established in the US in the late 1970s. To secure the desired freedom and avoid that FSF software could be copyrighted in the conventional sense by anyone, Stallman invented the General Public Licence (GPL) in 1989, a clever *legal hack* popularly denoted as the *copyleft*. This is a legally binding software licence, based on standard copyright law for its enforcement, but turns the copyright idea on its head. The GPL *requires* that source code containing GPL software as a part, must be released in full⁸. Thus GPL is often said to be “*viral*”. It “*infects*” other software in the sense that this source code must be released as well. The exact conditions under which “*infection*” will apply are important to know and are taken up in Chapter 4. Since one person’s freedom is another person’s constraint, GPL imposes limitations on what the developer can do with the code and he or she will have to make a choice as to what matters most.

The *open source* camp, cf. Raymond (1999), on the other hand, focuses less on the ideals of freedom and sharing and more on the strengths of the peer-to-peer approach, i.e., CBPP, to develop high quality software. Some of the open source licences, such as the Berkeley Software Distribution (BSD) license will, in contrast to the GPL, allow code to be incorporated into proprietary software where only the binary code is subsequently

7. See <http://www.fsf.org>; accessed September 1, 2011.

8. Copyright is often expressed as *all rights reserved* whereas copyleft can be characterised by *all rights reversed*.

Discussion point. Why do you think the centrally managed waterfall method in software development is generally inferior to agile methods and CBPP (with a committed and competent community)? If you were in charge of a different project like building a house, would you still prefer a managed top-down approach?

released. Raymond famously stated *Linus' law*, referring to the founder of Linux, Linus Torvalds:

Given enough eyeballs, all bugs are shallow.

With many users, some very competent, applying the software in different ways and environments, the probability of detecting errors and getting fixes is large. Linus' law implies that FOSS development needs to be done in a highly modular way. This contrasts sharply with the traditional "waterfall method" where software is developed through a strongly managed and planned top-down approach. A classical account of this approach and its problems is given in the book *The mythical man-month* by Fredrick Brooks (1995). He stated what is known as *Brooks's law*⁹, which essentially says that adding more developers to a project that is already late, will only lead to further delays. The reason is the increased administrative costs in management and communication in a traditional organisation. Thus Brooks's law stands in contrast to Linus' law, emphasising the value of communal efforts over hierarchical ones. The idea of software development as a modular and communal Internet-based effort with the tools to carry it out, was a very important innovation emerging in the 1990s. As noted, this has been a major inspiration in other areas where CBPP is undertaken. Parallel to this, the commercial software industry has left the waterfall approach and now employs flexible approaches typically denoted as agile methods¹⁰.



Image Public Domain Antonis Antonopoulos

Figure 2.2. Linus Torvalds in Athens in 2006.

2.2 Wikipedia

The on-line encyclopedia Wikipedia is another extremely successful CBPP project. As of July 2012, the site had 271 active language editions, where four had more than 1 million articles (English, German, French, and Dutch) and eight had 450 000 articles or more, including the Japanese and Chinese versions. The Encyclopedia Britannica, which is con-

9. See http://en.wikipedia.org/wiki/Brooks's_law; accessed September 3, 2011.

10. http://en.wikipedia.org/wiki/Agile_software_development; accessed July 12, 2012

sidered a kind of “gold standard”, has about 500 000 articles. In addition, 28 other language editions of Wikipedia had more than 100 000 articles¹¹. To foster cultural diversity, the Wikipedia project also offers editions in minority languages, artificial languages like Esperanto, and languages considered as dialects, such as alemanic or deutsch. The number of individual monthly users were over 470 millions, making it the sixth most popular site on the Internet.

The Wikipedia project was started by Jimmy Wales and Larry Sanger in 2001, more as an experiment inspired by FOSS, and without too high expectations. Before that, Wales and Sanger had started the online Nupedia encyclopedia which was also open to voluntary contributions, but which relied on reviews by experts before publication¹². Nupedia never took off. However, to their surprise, Wikipedia prospered spectacularly. For example, Figure 2.4 shows the rise of articles in the English version (left) and the average growth every sixth month. With over 4 million articles at present, the rate of growth is declining but still about 25 000 new articles are added monthly. Wales and Sanger later had a falling out¹³ and Sanger left Wikipedia. Wales, nicknamed “Jimbo” and pictured in Figure 2.3, continued as the senior *Wikipedian* and now heads the Wikimedia foundation.



Image © Itzike, Wikimedia Commons, CC-BY

Figure 2.3. Jimbo Wales during the final session of Wikimania 2011, celebrating Wikipedia’s 10th anniversary.

The content of Wikipedia is licenced under a Creative Commons (CC) licence. Creative Commons¹⁴ is a foundation established by the legal scholar Lawrence Lessig in 2001. Its aim is to provide: *free licenses and other legal tools to mark creative work with the freedom the creator wants it to carry, so others can share, re-mix, use commercially, or any combination thereof*. The idea is to give the creator more choice above either standard copyright or the GPL¹⁵. Open licensing will be treated later in detail in Chapter 5.

Briefly, all CC licences require that attribution is given to the creator. In addition, the creator can choose if the work should be made available on a commercial or non-commercial basis, whether to allow derivative works (e.g., re-mixes) based on the original, and whether

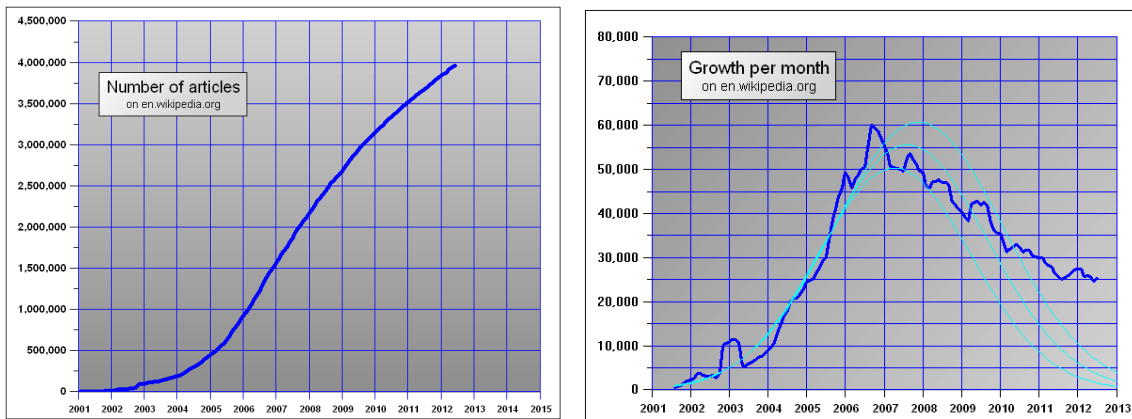
11. For lots of useful statistics about Wikipedia and the other Wikimedia sister projects see <http://stats.wikimedia.org/> and <http://en.wikipedia.org/wiki/Wikipedia:Statistics>; accessed July 11, 2012.

12. See <http://en.wikipedia.org/wiki/Nupedia>; accessed September 3, 2011.

13. http://en.wikipedia.org/wiki/Larry_Sanger; accessed July 16, 2012

14. See <http://creativecommons.org/>; accessed August 4, 2010.

15. Note that the GPL is designed for software, thus often not being suitable for other use. The GNU Document License can be used for all types of documents. However, the CC is designed for other types of media as well.



Images © HenkvD Wikimedia Commons CC BY-SA

Figure 2.4. The number of articles in the English language edition of Wikipedia (left) and the 6 month average growth with predictions (light lines) that turned out to be substantial underestimates (right).

to require that derived works, when allowed, should themselves be made available on the same terms (Share Alike or copyleft). CC offers six licences in total, since not all permutations of the options are meaningful. These licences have now become de-facto standards for content licensing beyond software, databases and hardware.

Wikipedia uses the *CC Attribution Share Alike*¹⁶ licence which is, in fact, close to the spirit of the GPL. This means that anyone can use Wikipedia content commercially provided they give attribution and cover what they then produce with the very same licence.

In 2003, Wales transferred the legal rights to Wikipedia to the Wikimedia foundation which now has nine other sister projects, including the free media repository Wikimedia Commons with over 13 million freely available media files. The scale of the voluntary effort is evident from the fact that as of August 2011, only about 75 people were employed by the Wikimedia foundation. A look at the yearly “Wikimania” conference gives a good impression of both the scope of the foundation and its future plans¹⁷.

Wikipedia has several typical CBPP characteristics. While centrally based standards are required, work on different entries and topics is to a large extent modular, allowing people to concentrate on their area of interest. The volunteers take on different tasks from correcting language and improving indexing, to writing and maintaining larger articles. The contributions rather than the formal qualifications matter. For example, a professor in one area will have little merit within his topic in Wikipedia until he or she has made contributions deemed significant enough by the community. But as the size of the project increased, more structure was needed. A formal hierarchy based on merit has therefore developed from editors and bureaucrats, to stewards with increasing responsibilities and rights for such tasks as checking articles and ask for improvements, deleting or locking

16. **CC-BY-SA.** See http://en.wikipedia.org/wiki/Wikipedia:Text_of_Creative_Commons_Attribution-ShareAlike_3.0_Unported_License; accessed August 4, 2010.

17. See <http://en.wikipedia.org/wiki/Wikimania>; accessed July 12, 2012.

Discussion point. We refer frequently to Wikipedia in this compendium and are careful to give the date of access since the content may change over time. However, there have been extensive discussions over when to use and not to use Wikipedia, for example in a university thesis. What is your view? Would you use Wikipedia in any setting?

controversial articles for further edits, and excluding community members committing vandalism, extensive trolling or other unwanted activities. Over time the community has also developed quite extensive rules and procedures for tasks such as securing quality and resolving conflicts. The flip side of this, however, is that it may take an effort for newcomers to do more than simple edits and become *Wikipedians*¹⁸.

Generally, Wikipedia holds good quality standards. For example, an investigation by the reputed journal *Nature* (Giles, 2005) found about the same number of mistakes in science subjects in Wikipedia as in *Encyclopedia Britannica*¹⁹. However, whereas the mistakes in Wikipedia were corrected almost instantaneously, *Britannica* has a slow review process to correct errors.

2.3 OpenStreetMap

OpenStreetMap (OSM)²⁰ works with creating a data-base of geospatial data, i.e., all kinds of facts that can be used to derive maps for diverse purposes. The OpenStreetMap project hosts several tools for mapping, rendering, and processing of these geospatial data. Currently, most OpenStreetMap data are licenced under the Creative Commons **CC-BY-SA** licence as Wikipedia. Some data are in the public domain, i.e., not covered by legal restriction. In July 2012, OpenStreetMap was undergoing a license change to the **ODbL** license²¹ We treat licensing in OpenStreetMap as a case study in Section 5.6, where we emphasise issues with the license change.

Besides the ordinary map, maps for cycling, hiking, skiing, nautical purposes, public transport, or maps for use in a GPS device²² can be derived from the OpenStreetMap data. We show examples of map renderings in Figure 2.5. Also information brochures for touristic purposes, such as town guides have been created from the data²³, as well as cultural purposes²⁴.

18. Examples: <http://www.techquark.com/2010/01/wikipedia-behind-pages.html>; accessed August 4, 2010 and http://www.nature.com/nature/journal/v438/n7070/box/438900a_BX1.html; accessed August 4, 2010.

19. See http://en.wikinews.org/wiki/Wikipedia_and_Britannica_about_as_accurate_in_science_entries,_reports_Nature; accessed August 4, 2010, http://en.wikipedia.org/wiki/Wikipedia:External_peer_review/Nature_December_2005; accessed August 4, 2010 and http://blogs.nature.com/wp/nascent/supplementary_information.pdf; accessed September 3, 2011. Note also that *Britannica* refuted some of the findings of this study; see http://corporate.britannica.com/britannica_nature_response.pdf; accessed September 3, 2011.

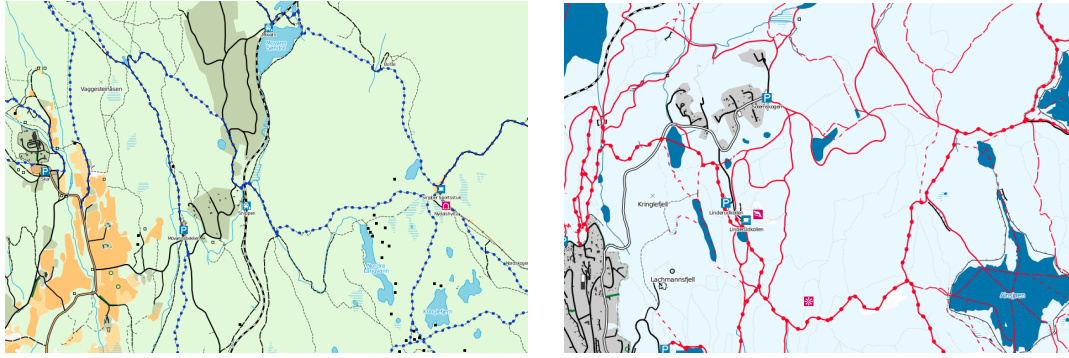
20. See <http://www.openstreetmap.org/>; accessed August 4, 2010.

21. Licensing for open data is outlined in Section 5.2.

22. See www.frikart.no; accessed August 4, 2010 for diverse maps of Norway.

23. See code.google.com/p/townguide/; accessed April 18, 2011.

24. See, e.g., the discussion at http://www.mindland.com/wp/stedsnavn_pa_helgelandskysten_



Images © OpenStreetMap Contributors CC BY-SA

Figure 2.5. Examples of map renderings in OpenStreetMap. Hiking trails (left) and cross country skiing trails (right) in areas of the Lillomarka near Oslo.

Geographic data from OpenStreetMap can be re-used for any purpose, while this is not the case with interactive map services such as Google maps²⁵. While the maps are freely available for viewing and presentation of overlays of third-party data such as tracks from a GPS receiver, Google maps does not make the geodata itself available. In contrast, OpenStreetMap allows the geodata to be extracted, processed with other third-party data, and visualised as long as the licensing terms are followed.²⁶

OpenStreetMap was founded in July 2004 by Steve Coast. In April 2006, a foundation was established to encourage the growth, development and distribution of free geospatial data and provide geospatial data for anybody to use and share. Besides other milestones it is worth mentioning that in December 2006, Yahoo confirmed that OpenStreetMap could use its aerial photography as a backdrop for map production.²⁷ At the end of 2010, *bing*, the search service operated by Microsoft, allowed aerial images from their service to be used at backdrop images.²⁸ The use of aerial photography eases the collection of data, so that currently both images from Landsat and from Yahoo can be used.

By August 2008, shortly after the second *The State of the Map conference* was held, there were over 50,000 registered contributors; by March 2009 there were 100,000; by the end of 2009 nearly 200,000; in autumn 2010 nearly 300,000 contributors; by August 2011 over 450,000; and by August 2012 over 700,000.²⁹

[mindland/](#); accessed July 28, 2012, where the blogger has noted names of all farm places on an island at Helgeland, Norway into OpenStreetMap in order to maintain a repository of these names.

25. See maps.google.com; accessed September 3, 2011.

26. For example, one could extract all roads in one area and visualise traffic patterns from a statistics database with varying thicknesses of these roads. This would be not possible with, e.g., Google maps, since the underlying geodata are not available for this purpose.

27. See <http://wiki.openstreetmap.org/wiki/Yahoo>; accessed August 4, 2010. Note, however, that this service is no longer available as of September 13, 2011.

28. Note, that the use of bing maps for this purpose is not allowed. bing has announced that they create services based on OpenStreetMap overlays. See wiki.openstreetmap.org/wiki/Bing; accessed August 30, 2011 and links pointing from there.

29. The data are retrieved from http://www.openstreetmap.org/stats/data_stats.html; accessed August 20, 2012. See also the fact sheet at http://community.cloudmade.com/blog/wp-content/uploads/2010/01/100106-OSM_Facts.pdf; accessed August 4, 2010.

As found in other CBPP communities, a minority of the registered users contribute the majority of the content: in March 2008 approximately 10% of the registered user base were contributing to the map data each month. New numbers in summer 2010 show that now only ca. 5% are contributing to the map each month.³⁰

Many FOSS projects support OpenStreetMap. The OpenStreetMap project consists of a database running on a number of servers, a database format, a wiki, a conference series, map rendering software, and tools to import, maintain, retrieve, and present these data. The project has connections to separate FOSS projects, like *gpsbabel*³¹. Products for mapping, i.e., editing the data, include *Potlatch* (a build-in editor in the OpenStreetMap web interface), *JOSM*, and *Merkaartor*. For rendering the maps alternatives such as *Mapnik*, *Osmarender*, and *Maperitive* are available.

OpenStreetMap is connected to related sister projects, like *Free the Postcode* (relating a geo-position to a post code), *Mapstraction* (making it possible to switch map in a browser interface), and *OpenStreetPhoto*, which seems to have split into *OpenStreetView* (geo-located photos) and *OpenAerialMap* (a not so successful attempt to exchange aerial imagery).

The *mappers*, as the contributors to the OpenStreetMap community are called, collect geospatial evidence from their GPS receivers using tracks and marked waypoints, from knowledge, or from geo-located aerial imagery. Tracks and other data are uploaded using an editor, and labelled with the correct tags. To use the data, these need to be rendered, either customised on the user's PC, or using the web-interface.

The earthquake that struck Port-au-Prince in Haiti, January 12, 2010, started an intense activity to create a map of this area from aerial imagery and GPS traces on the ground, in order to help the first responders to the catastrophe, and to help humanitarian aid organisations. Within a short time, OpenStreetMap hosted the only map of this area, that was precise enough for these purposes. The map also includes the many camps that were built for shelter after the quake. This example shows that CBPP principles in times of crisis are a very effective means. Therefore a separate web site, *CrisisCommons*³² has been created. There have also been efforts to use the concept of *crowdsourcing* for social activism and public accountability through *activist mapping*. One example is the non-profit company *Ushahidi*³³ which started by creating a witness-site after the heavily disputed election in Kenya in 2007.

The service FixMyStreet and its Norwegian counterpart FiksGataMi³⁴ build on data from

30. The numbers are retrieved from <http://wiki.openstreetmap.org/wiki/Statistics>; accessed August 4, 2010.

31. See www.gpsbabel.org; accessed August 4, 2010. Note that *gpsbabel* is under the GPL, which implies that it cannot be used as a library together with proprietary software.

32. See <http://crisiscommons.org/>; accessed August 4, 2010.

33. See www.ushahidi.com; accessed August 4, 2010 and en.wikipedia.org/wiki/Ushahidi; accessed August 4, 2010.

34. See www.fixmystreet.com; accessed September 3, 2011 and www.fiksgatami.no; accessed September 3, 2011.

OpenStreetMap. These services give citizens the opportunity to report problems with the infrastructure to their local council. The service automatically identifies the right authority from the description and the geo-location. Both services are interesting examples where CBPP is used to create a community that addresses real problems in the participants' lives, using artefacts from other CBPP projects, such as FOSS and geodata from OpenStreetMap.

2.4 Genealogy

The case of genealogy is interesting since it is said to be one of the largest activities on the Internet. Genealogy, the study of families and the tracing of their lineages and history³⁵, is a field that still struggles to embrace CBPP, even though most of the necessary pre-conditions seem to be in place. Besides scientists in history, there are many hobbyist genealogists who perform research for their own relatives with a high degree of volunteerism. While this field always has been important for the noblemen, it was embraced by larger parts of the people in the nineteenth century.³⁶ However, it seems that the CBPP principles are not very predominant, even though genealogists now use the Internet to perform their research. There are some examples, though.

Two issues are essential for genealogy: the genealogical data; and the tools to produce, process, and render these data, e.g., presenting, adding to the data base. Many of the original data sources for genealogy are centralised registers, driven by the command structure according to Benkler's classification. For Norway, the *Digitalarkivet*³⁷ maintained by the *Arkivverket* is one of these sources. There are also connections to projects to make these data available, such as the *historisk personregister*.

The Church of Jesus Christ of Latter-day Saints (LDS)³⁸ has engaged in large-scale micro-filming of records of genealogical value for their religious purposes, making these available through their Family History Library. The LDS also have developed the GEDCOM format for interchange of genealogical data³⁹ which has evolved to a de-facto standard. Due to the size of their library, the LDS are a predominant factor in genealogy. However, since the LDS have a hierarchical structure, they are not considered to be a driver in CBPP, but follow the command structure.

Lately, there are initiatives that can be considered CBPP, such as *WeRelate*⁴⁰, sponsored by the Foundation for On-Line Genealogy (FOLG), who collect facts and a genealogical database, predominantly the American area, e.g., providing lists of immigrants to

35. See <http://en.wikipedia.org/wiki/Genealogy>; accessed August 4, 2010.

36. Note that genealogy not always has been used for the good, since it has been used to prove whether a person belongs to a certain dependency, with the background of using this information for misguided political purposes.

37. See www.digitalarkivet.no; accessed Aug 10, 2010.

38. See http://en.wikipedia.org/wiki/The_Church_of_Jesus_Christ_of_Latter-day_Saints; accessed August 4, 2010.

39. See <http://en.wikipedia.org/wiki/GEDCOM>; accessed August 4, 2010.

40. See www.werelate.org; accessed August 10, 2010.

America. For Norway, the *Lokalhistoriewiki*⁴¹ is a collection of genealogical data by the *Norsk lokalhistorisk institutt*. The Norwegian *Arkivverket* also has an initiative where wiki technology is used to allow users to add contents to a database⁴².

The tools used in genealogy are mostly proprietary software, or shareware developed by enthusiasts who market their program using the shareware mechanism.⁴³ Among the FOSS genealogy tools we find *Gramps*, a project that was started in 2001 by Don Allingham, and released first in 2004 in a stable version⁴⁴. *Gramps* is an acronym for *Genealogical Research and Analysis Management Programming System*, and is licensed under the *GNU GPL, Version 2*. It is programmed in the programming language Python, has its own data base format (*Gramps XML*), and is capable of importing and exporting to file formats, such as *GEDCOM*.

2.5 Volunteer Computing

Volunteer computing⁴⁵ is a type of distributed computing in which computer owners donate their computing resources (such as processing power and storage) to one or more projects that benefit from these resources. Around the volunteer computing platform, and around the single projects there are communities whose members contribute with computing resources, and where the members' merits are visible through a ranking based on how much they contributed.

The Berkeley Open Infrastructure for Network Computing (*BOINC*)⁴⁶ is a middleware infrastructure developed at the Space Sciences Laboratory at the University of California, Berkeley led by David Anderson. *BOINC* uses the unused CPU and GPU cycles on a computer to do scientific computing. The *BOINC* software is released under the *LGPL*. *BOINC* consists of a server system and client software that communicate with each other to distribute, process, and return work units. The database including the computing chunks and the results is usually hosted by the project that benefits from the results.

BOINC was originally developed to manage the *SETI@home* project, replacing the original *SETI* client which was not designed with an adequate level of security, leading to cheating attempts on the "credits" and falsified work. The *BOINC* project started in February 2002 with *Predictor@home* as the first project in June 2004.

Besides *SETI@home*, examples of projects using the *BOINC* infrastructure include projects from biology, medicine, earth science, mathematics, physics, astronomy, fine arts, games, and others⁴⁷. Note that some of these projects are not *CBPP* projects, but scientific projects initiated by the scientific community. In several cases, the software used may not be re-

41. See www.lokalhistoriewiki.no; accessed August 10, 2010.

42. See <http://slekt.nr.no/wiki/Hovedside>; accessed July 23, 2013.

43. For a definition of *shareware*, see Section 4.1.

44. See gramps-project.org; accessed August 4, 2010.

45. See http://en.wikipedia.org/wiki/Volunteer_computing; accessed August 7, 2010.

46. See <http://boinc.berkeley.edu/>; accessed August 7, 2010 and http://en.wikipedia.org/wiki/Berkeley_Open_Infrastructure_for_Network_Computing; accessed August 7, 2010.

47. See http://en.wikipedia.org/wiki/List_of_distributed_computing_projects; accessed August 7, 2010.

leased as FOSS.

For example, Folding@home is a volunteer computing project on protein folding and other molecular dynamics, launched by the Pande Group within Stanford University. The project source code is not available to the public, citing security and integrity concerns. A development version of Folding@home on BOINC framework remained unreleased.

Note that CBPP projects often are highly interconnected, and they often draw use from each other. The volunteer computing platform BOINC was developed from the infrastructure of the SETI@home project while BOINC now is used by a multitude of projects that might compete with SETI@home for the computing resources of the community participants.

There are energy consumption concerns looking at the energy balance between using dedicated computing resources or volunteer computing. Running a project on a modern personal computer will increase power consumption utilising the CPU often to a very high degree, and thus preventing the computer to go into the power-save mode. While some may argue that the excess heat generated will contribute to house warming, in warmer regions there will be additional energy needed to cool the rooms. The energy-balance calculation requires a closer look.⁴⁸

Some types of crowdsourcing⁴⁹ are an interesting variant of volunteer computing, where human computing capacity is used to solve problems.⁵⁰ The Foldit project⁵¹ aims at the area of molecular biology (Khatib et al., 2011); EteRNA aims to create synthetic RNA designs (Markoff, 2011); and Phylo wants to solve genetic sequences alignments⁵². These projects may be characterised by the term “open science” to which we will return in Chapter 3.

2.6 Project Gutenberg

Project Gutenberg (PG)⁵³ is probably the earliest project that can be considered as CBPP in our sense. It was founded by the late Michael Hart⁵⁴ in 1971. The goal is “to provide as many e-books in as many formats as possible for the entire world to read in as many languages as possible.” To provide open access in the widest sense across present and future technologies, all texts are available in plain ASCII code.

In 1971, the Internet was in its infancy connecting only mainframe computers at research institutions. Hart had just obtained access to the University of Illinois’ computer and Project Gutenberg was born by accident. Inspired by the Fourth of July celebration that

48. See <http://en.wikipedia.org/wiki/Folding@Home>; accessed August 7, 2010.

49. See en.wikipedia.org/crowdsourcing; accessed February 25, 2012.

50. Our thanks go to Erlend Vestad, Gunn Kristin Breien Johansen, and Helena Zafira Pedersen for making us aware of this phenomenon in their course assignment (Vestad, Johansen, and Pedersen, 2011).

51. See fold.it; accessed October 7, 2011.

52. See <http://phylo.cs.mcgill.ca/eng/>; accessed March 5, 2012 and en.wikipedia.org/wiki/Multiple_sequence_alignment; accessed March 5, 2012.

53. See <http://www.gutenberg.org>; accessed August 24, 2011.

54. See http://en.wikipedia.org/wiki/Michael_S._Hart; accessed July 10, 2012.

Discussion point. Project Gutenberg may seem outdated compared to a massive archive such as *Google books*^a which contains millions of books. Those in the public domain may generally be freely downloaded as pdf files. However, for the majority still covered by copyright, Google can only make “snippets” available. What is your view here? Would you think Project Gutenberg could just be shut down since everything it contains is available for free on Google anyway?

a. See <http://books.google.com/>; accessed July 16, 2012.

year and happening to have the United States Declaration of Independence in his backpack, he felt the most useful thing he could do with the computer was to type in the entire document by hand and store it for anyone to access. This became his mission, and subsequently he digitised over 300 books in this way, one being the King James English bible, which finally appeared in 1989. In the 1970s, this was a somewhat eccentric activity with a rather limited audience. Hart was an idealist who in an interview said he “just never bought into the money system”. Instead he supported himself by doing odd jobs and lived on garage sales.

However, in the 1980s the interest grew and a community of volunteers formed around the project carrying out activities such as digitising (by hand until 1989), proofreading, and performing administrative tasks.

The participants can select books to include on their own. In some cases, the project has permission to digitise books which are still under copyright, but the majority have fallen into the public domain – i.e., the copyright has expired. Presently, the repository holds over 40 000 books in many languages with new releases at a rate of about 200 per month. The site is mirrored at several other locations.

2.7 Open hardware

Open hardware or *open source hardware* is modelled on the basis of FOSS. The idea is to make the design of physical objects and manufacturing procedures freely available along similar lines as for FOSS.⁵⁵ Open hardware licences are treated in Section 5.4.

Coupled with what is known as personal fabrication and desktop manufacturing, open hardware is an area with a lot of potential in areas such as prototyping and localised production. Desktop manufacturing includes equipment such as laser cutters, sheet material cutting, milling machines, and 3D printers. As for FOSS, the creativity and commitment are extraordinary, showing a wealth of both serious and not so serious activities. For example, a visit to the Maker Faire will demonstrate this⁵⁶.

An example is the *RepRap*⁵⁷ 3D printer. *RepRap* stands for “replicating rapid proto-

55. See <http://www.openhardwaresummit.org/>; accessed August 1, 2011.

56. See <http://makerfaire.com/>; accessed August 1, 2011.

57. See http://reprap.org/wiki/Main_Page; accessed August 24, 2011.

typer”, and can even print many of its own components. 3D printing is a form of additive manufacturing technology where a three dimensional object is created by successive layers of material.⁵⁸

The *RepRap* project was started by Adrian Bowyer at Bath University, and has now participants and related activities in several countries. The goal of the project is to give individuals everywhere access to equipment that can produce artifacts for everyday life at a low cost. Today, commercial low-end 3D printers will cost from 10 000 USD. The parts for a RepRap, on the other hand, are available for about 400 USD. The RepRap design and the software are licenced under GPL.

2.8 Open Fashion

Fashion is a popular style or practice, especially in clothing, footwear, accessories, makeup, body piercings, furniture, and other items that are designed by people.⁵⁹ ⁶⁰ On the one hand fashion is among the most counterfeited consumer goods⁶¹ while, on the other hand, many people create fashion on a hobby basis by sewing, knitting, and designing fashion. There is also a considerable number of people who want to share and discuss their designs with others, both on a commercial and on a personal basis. While fashion could provide a good basis for CBPP, many people would like to make an earning on their designs and entering the fashion business in competition with established players is not easy (Fasanella, 1998).

In most legislations most aspects of fashion are protected by copyright law, design patents, or similar. However, while original prints, original patterns, unique colour arrangements, and novel combinations of elements are protected, at least in the United States, the designs themselves are not.⁶² However, the trademark is protected, this is why many items, such as handbags, jeans, or shoes, have the company’s trademark all over them. Note that the phenomenon of *brand licensing* in the fashion industry (Tran, 2014) is a different phenomenon from CBPP.

von Busch (2005) presents a broader view of CBPP in the fashion industry. He points out that the kind of collaborative work efforts of the software industry, hacker communities, and open source projects can and should be applied to the world of fashion.

An example for a business creating a community for participants sharing fashion is BurdaStyle⁶³ who aim to *bring the craft of sewing to a new generation of fashion designers, hobbyists, DIY’ers, and inspire fashion enthusiasts*. BurdaStyle has its roots in the publishing business of sewing patterns. Today, BurdaStyle offers magazine patterns that can be purchased or are available free of cost, and open source patterns which they describe as *removed copyright* patterns.

58. Think about ink jet printing taken to 3D.

59. See <http://en.wikipedia.org/wiki/Fashion>; accessed July 14, 2014.

60. This section is inspired by the course assignment delivered by Li and Wallin (2013).

61. See http://en.wikipedia.org/wiki/Counterfeit_consumer_goods; accessed July 14, 2014.

62. See http://en.wikipedia.org/wiki/Fashion_law; accessed July 14, 2014.

63. See burdastyle.com; accessed August 15, 2014.

Patterns uploaded by members of the community can be used by BurdaStyle for their purposes, including making derivatives. In contrast to ordinary patterns received from BurdaStyle, open source patterns can be used by members of the community for commercial use.

One aspect of openness is being able to download a pattern free of charge. Another aspect is whether one is allowed to use a downloaded pattern for commercial purposes or for private use only. A third aspect is whether one is allowed to modify these patterns and redistribute them, either freely or to the community.

Other examples include *Thingiverse* and *Botho*. Thingiverse⁶⁴ is a community for *discovering, making, and sharing 3D printable things* including fashion items. The community encourages designers to use the Creative Commons licenses so that designs can be shared and further developed by others. Botho⁶⁵ is an eyewear brand that cooperates with open source developers as a way to listen to their community. The business model seems to be producing and selling the eyewear to customers.

References

- Yochai Benkler. Coase's Penguin, or, Linux and The Nature of the Firm. *Yale Law Journal*, 112:369–446, 2002.
- Fredrick Brooks. *The Mythical Man Month and other essays on software engineering*. Addison-Wesley, 1995. ISBN 0785342835953.
- Kathleen Fasanella. *The Entrepreneur's Guide to Sewn Product Manufacturing*. Apparel Technical Svcs, 1998. ISBN 9780966320848. free pages on <http://www.fashion-incubator.com>.
- Jim Giles. Internet encyclopaedias go head to head. *Nature*, 438(7070):900–901, December 2005. ISSN 0028-0836.
- Firas Khatib, Frank DiMaio, Seth Cooper, Maciej Kazmierczyk, Mirosław Gilski, Szymon Krzywda, Helena Zabranska, Iva Pichova, James Thompson, Zoran Popović, Mariusz Jaskolski, and David Baker. Crystal structure of a monomeric retroviral protease solved by protein folding game players. *Nature Structural & Molecular Biology*, advance online publication, September 2011. ISSN 1545-9993.
- Ying Li and Marianne F. Wallin. Open source and the fashion industry. assignment, course INF5780, University of Oslo, 2013.
- John Markoff. RNA game lets players help find a biological prize. *The New York Times*, page D4, January 10 2011. URL http://www.nytimes.com/2011/01/11/science/11rna.html?_r=3.

64. See www.thingiverse.com; accessed August 15, 2014; the section on fashion can be found at <http://www.thingiverse.com/explore/newest/fashion>.

65. See botho.co.uk; accessed August 15, 2014.

Eric S. Raymond. *The Cathedral and the Bazaar: Musings on Linux and Open Source by an Accidental Revolutionary*. O'Reilly and Associates, Sebastopol, California, 1999.

Richard M. Stallman. *Free Software, Free Society: Selected Essays of Richard M. Stallman*. GNU Press, Boston, Massachusetts, 2002.

Hung Tran. Fashion 101: Licensing in the fashion industry. wordpress, February 2014. URL <http://antwerpsex.wordpress.com/2014/02/18/fashion-101-licensing-in-the-fashion-industry/>.

Erlend Vestad, Gunn Kristin Breien Johansen, and Helena Zafira Pedersen. Crowdsourcing science through games. course assignment, INF5780, Institute for Informatics, University of Oslo, 2011.

Otto von Busch. *FASHION-able: Hacktivism and Engaged Fashion Design*. PhD thesis, School of Design and Crafts (HDK), University of Gothenburg, 2005.

3 Characterisation, Management, and Production of Goods



by Nils Christophersen

Markets and public institutions have been the dominant sectors managing and producing *goods* in a modern society. Here we use the term *goods* in the broad economic sense including tangible man-made physical objects and natural resources as well as intangible intellectual goods, e.g., scientific knowledge, lite literature, music, and software. We also include in our definition what is often denoted as services, e.g., teaching, health care, and financial services.

Following Benkler (2002, 2007), we will treat CBPP as a third mode of production and consider its relationships to the traditional sectors. As noted in the Introduction, the current situation is not clear-cut and may be characterised by a period of *disruptive innovation*. On the one hand, CBPP creates tension and causes disruption, and, on the other hand, the innovation occurring creates new opportunities also for companies and public institutions through for example crowdsourcing.

The determining factors in economic production have been financial capital, technology, infrastructure, and human resources. In what is often denoted as the *information and knowledge economy*, the role of human motivation, creativity, and talent have become more important. With the advent of the Internet and the subsequent low technological and capital thresholds for cooperation and communication, the importance of these human factors are taken to new levels.

Public institutions are organised as hierarchies with formal lines of authority. In a market, companies are also hierarchies while the drive towards economic gains is central to motivation. CBPP communities, on the other hand, work in very different ways having no formal hierarchies and pursue no direct economic gains. Such communities are not new; non-profit organisations such as charities, foundations and Non Governmental Organisations (NGOs) have similar characteristics. However, contrary to CBPP, traditional non-profit organisations cannot generally be considered important factors in a society for managing and producing goods.

To study the potential of CBPP as well as its limitations and the types of goods that may be produced in this way, we need some background on how goods are characterised in general, and how they are produced and managed.



Image © Andrew Smith, Wikimedia Commons, CC-BY-SA

Figure 3.1. A definitely non-rival pasture.

3.1 Characterisation of Goods

In economics, many questions relate to how firms work and compete in a market and whether goods should be produced or managed by public institutions or private enterprises. In such analyses, the two concepts of goods being *rival* vs. *non-rival* and *excludable* vs. *non-excludable* play important roles. Simply stated, rivalness is related to scarcity or abundance, while excludability is related to property rights and whether or not access should be granted and, if so, on what terms. These concepts are also central in discussing the role of CBPP and will be introduced in the following.

3.1.1 Rival and non-rival goods

A good is *rival* if its use or consumption by one person limits or affects its use or consumption by another person; otherwise it is *non-rival*. Note that this is not an absolute property; in practise it is often more useful to talk about degrees of rivalness. Single personal physical objects such as clothes and books are always rival – they can only be used by one person at a time. Regarding natural or man-made resources, rivalness is related to scarcity. For example, an originally abundant and therefore non-rival water resource will become rival as water becomes scarce for some reason.

Technology may strongly influence rivalness. An example is telephony: fixed line phones were previously rationed by telephone companies in several countries, and thus rival. These are now replaced by abundant mobile phones making the acquisition and use of phones effectively non-rival almost everywhere. As an opposite example, where technology makes a previously abundant resource rival, consider the increased CO₂ levels in the atmosphere due to industrial development. Under a quota system limiting global emissions, national CO₂ emissions become rival since an increased quota for one country will

imply reductions somewhere else.

Intellectual goods such as information, knowledge, and culture are considered inherently non-rival, since one person's use will not subtract from that of another person. While a book as a physical object is rival, the content as such is non-rival. The book is said to be an *expression* of the content (e.g., a novel) in the same manner as a CD is an expression of a piece of music. The non-rivalness of intellectual goods is well stated in a famous quote by the third president of the United States, Thomas Jefferson, who strongly influenced the country's copyright and patent laws. He wrote to a friend in 1813:

*He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper [candle] at mine, receives light without darkening me.*¹

Goods may also have the property of being *anti-rival* (Weber, 2004). This means that as more people start using the good, the value increases for all. Such a phenomenon is also called a positive network effect and has been popularised through *Metcalfe's law* which states that the value roughly increases as the square of the size of the community². The Internet and other networks are examples of this. As more people participate, even more people will tend to join the community, in turn even further increasing the usefulness or value of participating.

3.1.2 Excludable and non-excludable goods

A good is *excludable* or *non-excludable*, if someone has the right to regulate access to it or not. Issues of excludability are independent of rivalness. The right to grant access, either for free or for a price, or deny it altogether, is the essence of ownership. Property laws are therefore central to excludability. Intellectual goods are subject to Intellectual Property Rights (IPR). Note that these do not imply ownership in a conventional sense but give instead a time-limited monopoly, as discussed below.

In addition to legal rights, measures of exclusion include physical barriers and secrecy. As with rivalness, the *degree* of excludability is often of most interest and this depends on how effectively the available measures may be enforced in practise. As with rivalness, technological changes may strongly influence excludability. An obvious example is the role of the Internet and PC in allowing large-scale file sharing of copyrighted material. Earlier, it was hard for most people to copy CDs and books so this was a technical barrier in addition to the legal one, i.e., the IPR. With the advent of the Internet, this barrier disappeared and instead copy protection measures such as Digital Rights Management (DRM) were developed³.

1. <http://odur.let.rug.nl/~usa/P/tj3/writings/brf/jef1220.htm>; accessed August 26, 2010.

2. http://en.wikipedia.org/wiki/Metcalfe's_Law; accessed August 6, 2011. Metcalfe's Law is related to the fact that the number of unique connections in a network of n persons can be expressed as $n(n-1)/2$, which is proportional to n^2 for large n , i.e. $O(n^2)$

3. http://en.wikipedia.org/wiki/Digital_rights_management; accessed August 10, 2011.

	Non-rival	Rival
Non-excludable	<i>Public goods</i> ; e.g., plentiful and freely available natural resources; goods funded through public institutions including scientific knowledge, non-toll roads, policing; goods provided by CBPP communities ^a .	<i>Common-pool resources</i> ; e.g., water for irrigation, atmospheric CO ₂ levels related to climate change with no proper enforcement of quotas.
Excludable	<i>Toll or subscription goods</i> ; e.g., toll roads, newspaper subscriptions, intellectual goods under conventional IPR. ^b	<i>Private goods</i> ; e.g., personal items such as clothes, CDs, and books; private land.

a. There is a catch here. These goods are typically protected by copyright. But then by a special license securing re-use and re-mix such as GPL or Creative Commons.

b. Such as standard copyright – all rights reserved.

Table 3.1. Four types of goods characterised according to whether they are rival/non-rival and excludable/non-excludable. Adapted from Hess and Ostrom (2007).

3.1.3 Rivalness and excludability taken together

Considering these concepts together leads to a broad division of goods into four groups as shown in Table 3.1. Rival goods are called *common-pool resources* if they are also non-excludable and thus vulnerable to competition leading to over-use. They are called *private goods* (typically owned privately) if they are excludable. Non-rival goods on the other hand, are aptly called *public goods* if they are non-excludable and thus available to anyone. They are called *toll and subscription goods* if they are excludable.

We will consider the above divisions in more detail below and how they relate to production in the market, in the public sector, and CBPP. But given the importance of IPR as a measure of exclusion in our context, we give a brief treatment of some of the legal measures and issues in this complicated and contested field. For physical objects, land, and natural resources, the concept of property is generally well understood and established. However, this is not necessarily the case for goods covered by IPR. More detailed treatments are given in the following chapters.

3.1.4 Excludability through IPR

Starting with the basics, two main instruments of IPR laws are *patents* and *copyright*; others include trademarks, industrial design rights and trade secrets. Patents and copyright have different histories and were developed for different purposes. Patents have been issued by authorities for centuries and regulate the use of inventions and ideas for commercial use. Copyright, on the other hand, does not cover ideas as such, but applies to the “expression” of works (copying, distribution, and adaption), such as printed matter, drama, sound recordings, movies, and computer programs. In addition to having the

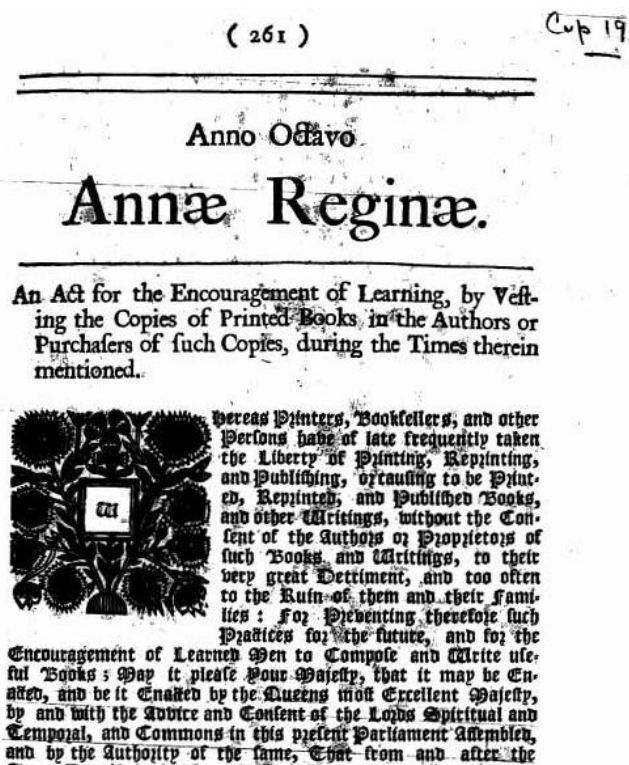
Whereas Printers, Booksellers, and other Persons, have of late frequently taken the Liberty of Printing, Reprinting, and Publishing, or causing to be Printed, Reprinted, and Published Books, and other Writings, without the Consent of the Authors or Proprietors of such Books and Writings, to their very great Detriment, and too often to the Ruin of them and their Families: For Preventing therefore such Practises for the future, and for the Encouragement of Learned Men to Compose and Write useful Books; May it please Your Majesty, that it may be Enacted ...

© Wikipedia, CC-BY-SA.

Frame 3.1. Text of the Statute of Anne

exclusive commercial rights, a copyright holder also has the right to be credited for the work and to determine who may adapt the work to other forms.

Copyright as a measure of excludability was gradually developed following the invention of the movable type printing press by Johannes Gutenberg in about 1440. As books could be printed and sold in large numbers to an increasingly literate population, commercial interests developed around book publishing. In Britain, around the year 1700, the printers wanted to maintain the monopoly they had on printing but the Parliament declined to extend their license. The printers then started to stress the benefits of a printing license to authors rather than to themselves, and the Parliament eventually passed a law in 1710, known as the *Statute of Anne*, after the queen. This became the first modern copyright law with its emphasis on the protection of the interests of authors. The preamble is shown in Figure 3.2 while the text is given in Frame 3.1.



Source: Wikimedia Commons, CC0

Figure 3.2. The Statute of Anne from 1710.

Both patents and copyright allow goods to be made excludable only for a limited period, thus creating a monopoly for a certain time. Therefore IPR does not imply “property” in the conventional sense. For this reason, Richard Stallman (2002), for example, in the Free Software Foundation discards the term IPR altogether. In many jurisdictions (geographical area covered by the same IPR regime), the time limits are now 20 years for patents

and 70 years after the death of the creator (or last surviving creator) for copyright⁴. Thereafter, the good is not covered by IPR and “falls into” into what is called the *public domain*, freely available to all. To obtain protection, a patent must be applied for and the application must contain a description of the invention which, if the patent is granted, is made public. In return, the inventor gets the exclusive but time-limited commercial rights. Copyright, on the other hand, applies automatically and need no application to be valid.

The reason for the time limits rests on what we may call a *fundamental trade-off* where the law tries to strike a balance between the interests of the creator on the one hand, and the society at large, on the other hand. By granting a monopoly, society gives the creator the possibility to reclaim the investments and development costs, and make a profit in the market. This, in turn, is meant to stimulate further work and innovation by the creator, possibly allowing more risk-taking. But by granting only a time-limited monopoly, the invention or work will eventually become non-excludable and a public good, available for everyone to use and build on, which will promote general progress and social welfare.

It seems reasonable to give creators certain rights, or at least, no one will argue that creators of intellectual goods shall *not* be able to earn a living from their work. The main controversies in a jurisdiction are about two separate issues which are often mixed up: the first is the duration of the monopoly and the second concerns the type and severity of the measures of excludability to be employed, both legal and technical. The extension of the duration as well as new measures of excludability have been promoted typically by commercial interests over the years .

When Britain introduced the Statute of Anne in 1710, the duration was 14 years and could be renewed for another 14 years if the author was still alive after the first term expired. The US used the same time limits when introducing its federal Copyright Act of 1790. Since then the duration of copyright has been extended several times. The last extension in the US came with the *Copyright Term Extension Act* of 1998, often denoted popularly as the *Mickey Mouse Protection Act* due to the the lobbying of the Disney corporation in favour of the law. Until 1998, the duration in the US was for the life of the author plus 50 years, or 75 years for a work of corporate authorship (by corporate employees). The act extended these limits to 70 years for authors and 120 years after publication for corporate authorship.

Regarding exclusion measures adapted to the digital age, there is DRM (Digital Rights Management) on the technical side and on the legal side laws such as the US Digital Millennium Copyright Act (DMCA)⁵ which was passed in the US also in 1998. Among other things, it strengthened penalties for copyright infringement on the Internet. However, it limited the liability of the providers of on-line services for copyright infringement by their users. However, two new, recently proposed laws before the US Congress, the

4. Here the “creator” is the person(s) or the legal entity (e.g., company) holding the legal rights. These rights may be transferred or sold.

5. <http://en.wikipedia.org/wiki/DMCA>; accessed August 10, 2011.

Stop Online Piracy Act (SOPA) and the Protect IP Act (PIPA) will, if passed, make Internet sites and providers liable to copyright infringement by users. These laws were put on hold due to strong protests which included a shutdown of Internet sites such as Wikipedia on January 12, 2012.

Concerns have been raised by several legal scholars, e.g., Benkler (2002), Lessig (2005), Heller (2008), and Boyle (2008) that the balance has been tipping too much in favour of the creators which in practise often means commercial actors. For example, allowing copyright to last 70 years after the death of authors seems overly long. In our view, a shorter period could hardly lessen the motivation of authors to pursue writing and publishers to publish their work.

A debate in *The Economist*⁶ in 2009 gives insights into the arguments framed on both sides. Regarding patents, the dispute is not so much over the issue of the duration as over over-patenting. Over-patenting includes protecting ideas with little *innovation height* (e.g., Amazon's patented *one-click* buy option) and creating of *patent thickets* (dense webs of overlapping legal rights). Questions of fairness have also been raised such as charging equally high prices for pharmaceuticals in developed as well as developing countries. Figure 3.3 shows the yearly number of new patents in the US.

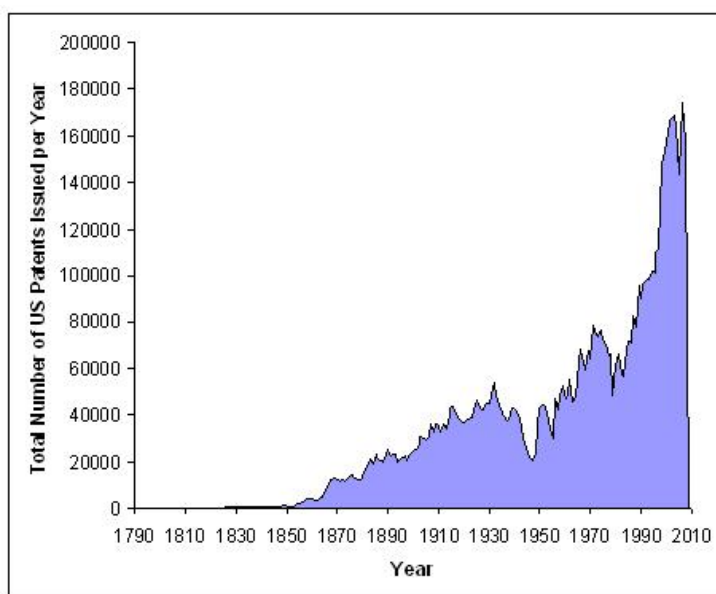


Image © Patentesque, Wikimedia Commons, CC0

Figure 3.3. The number of patents granted in the US

Heller (2008) introduced the term “gridlock” economy to describe a situation where excessive legal rights block access to intellectual goods thus impeding and not promoting progress and social welfare. However, as a result of the success of CBPP and in particular FOSS, an opposing trend emphasising even the commercial value of openness and collaboration has emerged. For example, companies in a market may find FOSS useful as part of their products to increase quality and also as a tactic to undermine similar proprietary software from competing companies. See, e.g., Lerner and Schankerman (2010). We stress again that CBPP products are typical under copyright law, but covered by special licenses such as the GPL and Creative Commons licenses. These allow the creators to enforce the specific types of open access and use they will grant.

6. <http://www.economist.com/debate/debates/archive/page:13>; accessed August 10, 2011.

3.2 Traditional Production and Management of Goods

Important questions in politics and traditional economics at the heart of many issues and controversies, are how firms should work and compete in a market, and whether goods should be produced or managed by public institutions or by private companies.

In a competitive world, excludability through clear property rights is a prerequisite for the market economy to work. Without such rights, companies cannot negotiate and trade. Referring to Table 3.1, the market can therefore only manage and provide goods in the two lower quadrants – toll or subscription goods or private goods. The role of the public sector is to regulate the market, and to provide goods that the market cannot readily supply, or that society determines should be non-excludable and non-rival so that everyone benefits. A main domain of the public sector is thus the upper left quadrant aptly named *public goods*. However, society may also provide goods at a price paid up-front such as water and electricity, which are then excludable subscription goods. The common pool resources in the upper right quadrant play no large role in the market vs. public dichotomy.

In the traditional sectors, economic gains, formal contracts, and hierarchical organisations with clear lines of authority provide incentives and regulate behaviour. The importance of reciprocity and trust between actors are, of course, recognised but are not assumed critical for the market or the hierarchy to work. An important advantage of these standard forms of organisations is that markets and hierarchies scale; i.e., since they are not based on personal relationships or a sense of community, they function even as the number of people involved grows by orders of magnitude. However, with sufficiently low coordination and transaction costs, CBPP demonstrates that humans can still carry out large collaborative and economically significant projects without hierarchy and monetary incentives.

The underlying view of humans in the traditional spheres of economics is one of rational and self-interested beings narrowly focused on their subjective ends. This view has been characterised by the term “*homo economicus*”⁷. In line with this view, it is assumed that people acting rationally will not contribute voluntarily to a common task if their contribution is only insignificant to the whole effort. This was stated already by Olson (1965) in his influential book *The Logic of Collective Action: Public Goods and the Theory of Groups* that almost became classic in parts of the social sciences. He further theorised that “only a separate and *selective* incentive will stimulate a rational individual in a latent group to act in a group-oriented way”; that is, only a clear incentive obtained through participation, and not otherwise, will provide the motivation to contribute to the group effort. This means that individuals will only act collectively to produce goods that are exclusive and solely available to those that have contributed. In other words, people will not produce or make something collectively that somebody else can then obtain without having contributed, i.e., through free-riding on the efforts of others. On such a basis, it is not surprising that CBPP in many respects has been a challenge to current thinking.

7. http://en.wikipedia.org/wiki/Homo_economicus; accessed August 10, 2011.

Note though that Olson explicitly excluded small groups based on family relationships and emotional ties; nor did he consider non-profit organisations and non-rival collective scientific efforts.

3.3 Production and management of goods through commons-regimes

A successful commons requires a community with an emphasis on sharing, voluntary contributions, and self-organisation. To achieve this, a sense of trust and reciprocity is quintessential. As noted, this is very different from what is required for a market or hierarchy to work. Here we consider in turn the four types of goods in Table 3.1 from a commons perspective and whether they may be managed or produced by a community. Excludability when applied to a commons regime will not relate individuals within the community but to relationships between the community and its surrounding parties.

3.3.1 Common pool resources and common property regimes

A traditional commons has been a shared natural resource. As long as this is effectively a freely available and plentiful public good such as abundant water, there are no management questions for us to consider. However, an important issue has been the management or lack of management as utilisation increases and the resource is no longer abundant but becomes rival, i.e., as the resource changes from what is effectively a public good and instead becomes a common-pool resource, cf. Table 3.1.

Such resources were the topic of a very influential paper published by Garret Hardin (1968), *The Tragedy of the Commons*, which in many ways discredited the concept of the commons. Hardin describes what will happen when individuals share a common resource, e.g., a grazing field, and each out of self-interest is tempted to maximise his or her own benefit. For example, it is very human to ask one self: “Why not put in a few more of my sheep to better fend for my family? The others will surely not notice and it cannot hurt the field.” It is sufficient that one or only a few persons try to do this kind of *free-riding* before trust and solidarity within the community starts to erode. When this happens, others, not wanting to be exploited, easily follow and the situation may escalate and get out of control. As a consequence, the field is depleted and goes to waste, in turn destroying the livelihood of the community. In other words, the argument is that such a rival and non-excludable commons regime is inherently unstable in the sense that the action of one or a few persons may trigger the collapse of both the commons and the community itself. In Hardin’s own vivid words:

Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.

The morale is in line with Mancur Olson’s view: A community will be unable to sustain itself through collective action due to free-riding, overuse, lack of organisation, and motivation. This may indeed be a realistic description concerning rival and truly non-

excludable resources. In his book, *Collapse*, Jared Diamond (2004) describes the decline of several historical civilisations where overuse of natural resources was among the leading causes of their demise. Influenced by Hardin's analysis, a conventional view has become that natural resources are best administered either through the means of privatisation or public management.

However, the "tragedy" is avoidable. It turns out that many traditional societies have, in fact, managed to sustain rival resources as long-term commons. This has been extensively documented by the late Elinor Ostrom and co-workers at Indiana University.

Over a life-time of scientific work, Ostrom (1990, 2005) studied such commons. Based on thousands of field studies, she and her co-workers have shown that under certain conditions peers can indeed manage their local resources in a sustainable way that even outperforms private or public regimes. The key is to mobilise and, crucially, to maintain sufficient trust and reciprocity within the community so that everyone will *follow* the rules agreed upon. For this to work, she has identified eight design principles⁸ which must be considered broadly as necessary conditions for a sustainable community. That is, they do not guarantee stability but unless these principles are not in place the probability of collapse increases sharply. To start with, it is central to define who is part of the community and who is not and to establish some sort of excludability towards external un-entitled groups who could otherwise free-ride or simply take over the resource. Thus, regarding Table 3.1, the resource must essentially be moved from the upper right corner to the lower right one becoming "private" to the community. It will now be subject to what is called a *common property regime*, where excludability refers to parties *outside* the community.

One of many historical examples where communities were unable to maintain control over their resources is the so-called enclosure in Britain where common land was physically enclosed and privatised over several centuries. This often meant that people were driven away so that private owners could use the land for other purposes such as large scale sheep grazing for the production of meat and wool⁹.

Once the rights of the community over the resource is established, the other design principles include securing some form of democratic governance, establishing agreed upon regimes for appropriation (harvesting) and provisioning (development and maintenance), monitoring, sanctions and conflict resolution. This helps, on the one hand, to build and sustain trust and reciprocity within the community and, on the other hand, to keep members in check who may be tempted to free-ride and exploit the others. Together, such measures have proven effective, although not fool proof, in avoiding the tragedy of the commons¹⁰. Ostrom's last design principle concerns scaling to larger networks where

8. Ostrom's eight design principles are listed in Section 3.5, p. 47.

9. James Boyle (2003) talks about the "second enclosure" in connection with privatisation and commodification of information and knowledge.

10. In Norwegian the word *dugnad* means to participate in voluntary work in a group. A common example is the traditional *dugnad* by members of a *borettslag* (housing cooperative). However, fewer people seem to participate these days, indicating less community commitment.

she advocates a multi-layered, nested approach creating a polycentric system. The idea is to form larger structures by building on working local communities. As noted, Ostrom committed her life's work to this research, for which she received the Economics Prize in the Memory of Alfred Nobel in 2009.

3.3.2 Excludable and non-rival goods

Turning to the non-rival goods to the left in Table 3.1, the situation changes since there is no "overuse" and no potential conflicts related to inherent scarcity within the community. Thus, such a commons is not threatened by the "tragedy". Our interest here is in intellectual goods. Typical examples are formal or informal professional societies keeping secrets of the trade to themselves. An early case is medieval guilds devoted to, for example, glass manufacturing, smithing or stone masonry. The knowledge was watched over by the guild members, and only taught to selected apprentices who would advance through the community as they gained trust through demonstration of competence and skills. Today, we see the same practises within some communities, such as magicians and culinary chefs (Fauchart and von Hippel, 2008; Loshin, 2008). Strong norms preserve the knowledge within the community and unauthorised revelations will result in condemnation and possibly social exclusion.

Here, a monopoly is maintained through secrecy which is the measure used to secure what may be called the community's IPR. The incentive of the community members is well understood from Olson's viewpoint since access to the good can be obtained only through participation in the community and not otherwise.

3.3.3 Non-excludable and non-rival goods

Our interest here is in CBPP where there is neither the threat of overuse and an ensuing "tragedy", nor any desire or need to keep the good exclusively for community members. In fact, anyone can free-ride on what the community produces and is indeed welcome to do that. From the perspectives of the previous sections, it seems rather natural to ask why anybody would form such a community in the first place since membership does not seem to entail any specific advantages. From Chapter 2 and the participation inequality we do know that there are many more free-riders (lurkers) than there are contributing community members in CBPP projects. Furthermore, only a small part of the active members do most of the work. However, as we have seen, in successful projects impressive results are produced by the relatively small core groups, and there is indeed a large number of such projects.

To understand the motivation behind these efforts, one must search beyond the theories that have been developed to explain why markets and hierarchies work and, not surprisingly, draw on a wider understanding of human motivation. Monetary incentives, "rational" self interest, and the role of authority will not work.

The concept of the *gift economy*, originating within anthropology, was first put forward by Raymond (1999) as a means of explaining the motivation behind FOSS communities. The concept was originally developed by anthropologists to describe traditional cultures

where gift-giving played a central role in strengthening social ties and obligations without the immediate return of favours or other forms of compensation¹¹. (On a more everyday basis gifts are, of course, important in all informal human relationships.) In the following, we will not try to elaborate further on the potential of such an approach in explaining CBPP communities. Instead, we consider scientific communities which have many of the essential characteristics of CBPP, and which have produced knowledge as a public good for 300-400 years. As noted also by Raymond (1999), such communities are interesting both because of the many similarities with CBPP and also because both the Internet and FOSS grew out of scientific engineering communities.

3.4 Scientific communities

Today, scientists are professionals employed by universities and research institutions. However, scientists also identify themselves to a large extent with the community within their field. Scientific communities are meritocracies and characterised by clear norms of attribution, openness, and trust, as well as competition and conflict.

Modern science traces its beginnings to what has been denoted as the “scientific revolution” occurring as part of the European Enlightenment. The rise of modern science was, however, not a sudden event, but emerged over a considerable time period. Some authors consider the period to be the 144 year interval from 1543, when Copernicus published his book on the heliocentric system, to 1687, when Newton published *Principia Mathematica* (Watson, 2006). During this period, a mode of rational inquiry was established based on a systematic experimental approach coupled with the crucial practise of open peer review.

The Royal Society, established in London in 1660, was instrumental in institutionalising this approach (Bryson, 2010). Manuscripts were circulated internationally for comments, read to the Society in public, and printed in their journal “*The Philosophical Transactions of the Royal Society*”. The members of the Society were a curious group interested in practical matters and carried out various experiments and demonstrations in their meetings, including animal dissections. Most of them were men of independent means, and not affiliated with universities, which still relied on traditional and theoretical scholarship. In our terms, they were a community of peers self-selecting what they wanted to do on a not-for-profit basis.

Newton’s work subsequently gave an enormous status and impetus to the natural sciences by showing how a small set of basic principles could explain a vast set of observations both terrestrial and astronomical. Newton himself somewhat modestly said:

If I have seen further, it is only by standing on the shoulders of giants.

Open peer review was invented by the Society to establish priority and credit, but was also, though unintended, a key factor leading to the explosion in creativity and innovation in the natural sciences. Science prospered simply because this is a productive and self-reinforcing way of creating new knowledge.

11. See http://en.wikipedia.org/wiki/Gift_economy; accessed August 16, 2012

Before open peer review was established, it was not obvious how a scientist could secure priority over a discovery. With the slow means of communication, others could claim to be the first. One way was simply to keep it secret and another to publish the result in coded form as a kind of riddle. Then as now, being the first is everything in science.

Scientific communities in general have certain characteristic norms which are worth noting in relation to CBPP:

Self-selection: Scientists generally select for themselves what they will work on. Most workers contribute only small bits as part of their formal degrees, and go on doing something else. However, some few choose science as a career and become professionals. Academic freedom through permanent, tenured positions is generally recognised as the best way to promote creativity and scientific progress. Among the professionals, a few will be considered truly outstanding (e.g., Nobel Prize laureates) confirming the participation inequality.

Attribution and priority: As noted, being first and claiming priority is critical. Thus credit must always be given. In writing, this is done through citations. Claiming priority of a result that has already been published by others is a mistake that must be rectified in public. If it is done on purpose, i.e., plagiarism, it is unforgivable and would easily lead to expulsion from the community.

Incentives: Productive scientists obtain a genuine satisfaction from their work and especially if the work is carried out together with close and equally skilled colleagues who share the same strong interests.

Scientific communities are meritocracies where reputation and recognition play an important role for most scientists. Research grants, for instance, are highly dependent on recognition. It can only be earned through contributions deemed significant enough by peers to warrant attribution. In this way, a particular hierarchy is established with internal quality norms. The desire for recognition and reputation can foster strong conflicts and competition. Watson (1968) gives a good description for this in his book *The double helix*, which describes the race to determine the chemical structure of DNA.

Peer review and publication: Communication between scientists continuously takes place, ranging from discussions between close and trusted colleagues to formally written publications subject to anonymous peer review. To ensure priority, all articles in reputed journals carry the date they were received by the journal as well as when they were received again after possible revisions. These publications constitute the formal communication to the wider community and to posterity, and which, if judged interesting enough by peers, will be cited. Journals come in a wide variety, some highly specialised while others are of a general nature. They have different reputation and status indicated today by the so-called *impact factor*, which is a measure of the average number of citations received by articles in a journal.

Science and IPR: Scientists have traditionally been satisfied with producing knowledge

as a public good, open for everyone to apply and use. IPR and market considerations have not played a major role in scientific communities as incentives. However, with the increased commercial value of knowledge and intellectual goods, this attitude has been changing over the last decades. In 1980, the US passed the Bayh-Dole act giving universities, small businesses and non-profits the commercial rights to scientific results from publicly funded research projects. The universities then established Technological Transfer Offices (TTOs) to facilitate commercialisation. A similar law was passed in Norway in 2003, with the subsequent establishment of university TTOs.

Another issue regarding science and IPR is the copyright on scientific articles. Scientists typically submit their papers for free to the best reputed journals they think may publish the work. The journals are traditionally published by commercial publishers which then, if the paper is accepted, want the copyright transferred to them. The scientists' home institutions, in their turn, subscribe to the journals often paying a steep price. This practise, considered by many as rather arcane and excludable towards other scientists especially in developing countries, is being disrupted by several so-called Open Access (OA) initiatives. For example, institutions may secure the right to self-publish their papers on the Internet. One also observes many new OA journals which distribute papers for free, but charge the authors a fee instead.

3.4.1 The Internet

The Internet grew out of an effort in the 1960s to connect mainframe university computers in the US in order to utilise available computing resources more efficiently. The work was originally financed by the US Department of Defence ARPA (Advanced Research Projects Agency) and has gone through a fascinating development. Abbate (1999) gives a highly readable account of the first decades with a focus less on technology and more on the personalities involved and the social environment. A key factor was that the developers were drawn from a scientific engineering community and given freedom to design an open, distributed and generally accessible network. Critical decisions were to use so-called packet switching implemented through the TCP/IP protocol¹² and base the design on the end-to-end principle, meaning that processing of content is not carried out in the network but exclusively at the sender and receiver. The result was a network that transmitted standardised data packets from sender to receiver through the links that were available, without any consideration of packet contents. In some ways, this resembles the ordinary mail system which is an infrastructure for transmitting letters or packets irrespectively of content.

The Internet is a good example of a very successful effort carried out in an open scientific mode of collaboration which in many ways is similar to CBPP. Note that at some point in the early development, it was not clear what the major applications to be built on the Internet would be. Innovations, such as e-mail, the World Wide Web and file sharing came from outside the core community.

12. http://en.wikipedia.org/wiki/TCP/IP_model; accessed September 1, 2011.

The early spirit of the Internet has been characterised by computer scientist David Clark (1992) as

We reject: kings, presidents and voting. We believe in: rough consensus and running code.

As another example Tim Berners-Lee who invented the technology behind the World Wide Web, explicitly decided not to patent his invention but leave open for all to use.

In such a spirit, it is not surprising that security and fraud were not high on the agenda in the original Internet engineering community. Therefore, the first computer worm, released by Robert Morris in 1988 (*The Great Worm*), caused havoc, and a rethink of security and reliability.

The scientists involved circulated ideas and opinions through informal notes or so-called RFCs (Requests For Comments). Today, Internet standards are developed and maintained by the Internet Engineering Task Force¹³ (IETF) which is still an open community working through RFCs and consensus. (Some of their voting techniques may even seem a bit peculiar. Dusseault (2007) describes how *humming* is used in a meeting. The strength of a group humming sound is an indicator for which proposal to follow.)

3.5 Commons-Based Peer Production

As in science, CBPP communities also produce non-rival and non-excludable intellectual goods and these two types of communities, share many other characteristics as well. Regarding the differences, science, at least pure research, often provides new knowledge without obvious applications. In CBPP, on the other hand, the goal is often more practical producing something of more immediate value to the community and society. Such goods may therefore be in more direct competition with what the market already provides. Again, FOSS is the obvious example providing software free of charge often in direct competition with the software industry. Another obvious difference is that scientists are now professionals earning both a living and creating a career from what they do. This leads to pressure and competition among scientists as exemplified by the expression “publish or perish”. The volunteer participants in CBPP, on the other hand, work more on a hobby basis and can afford a more relaxed attitude.

We repeat a fuller version of what characterises CBPP projects and communities; we also refer to Benkler (2002), and to Chapter 2.

Projects. The project must be organised so it can be carried out in a *modular* way allowing different parts to be worked on in parallel. Benkler also stresses that the set of possible tasks should be *heterogeneous*, i.e., require a range of different skills. In addition, tasks should range from the very simple to the more complex and time consuming, i.e., have different *granularity*.

Peers. A CBPP community is decentralised and the peers volunteer on a not-for-profit

13. <http://en.wikipedia.org/wiki/IETF>; accessed September 1, 2011.

basis by self-selecting what they want to do. If a project can be set up as described above (i.e., being modular, with tasks of sufficient heterogeneity and granularity), it will provide incentives to a diverse community of people with different backgrounds and interests as well as differences in motivation and willingness to invest time and effort. This is critical for success since the project depends on voluntary contributions by the peers typically in their spare time, i.e., it depends on their *excess capacity*. This capacity, of course, varies widely between individuals and over time for the same person.

Integration. Integration requires both quality control to fend off incompetent or malicious contributions and ways of combining contributions into a whole. Benkler mentions four combined mechanisms for integration: 1) iterative work by a diverse community providing creativity and redundancy, 2) technical solutions (e.g., version control systems, mailing lists, wikis), 3) legal licences, and 4) norm-based social organisation with a limited re-introduction of hierarchy or market. The integration function must be low-cost or itself sufficiently modular to be peer-produced, e.g., through voting procedures.

It is interesting to speculate which types of non-rival and non-excludable goods can and cannot be produced through CBPP. Before FOSS emerged, few would have assumed that quality software could be produced in this way. The community created both the norms required, the technology that was needed, and the necessary legal framework. One should therefore be careful in excluding possibilities in advance even though it could be tempting to exclude goods such as novels, symphonies, and films since these are normally produced single-handedly or in a strongly hierarchical way. However, what is called participatory media can be found on the Internet¹⁴.

Regarding CBPP communities, it is interesting to explore further two interconnected observations. 1) the so-called *participation inequality* and 2) the *decisive role of merit through participation*.

A common rule of thumb is the 20/80 rule (the Pareto principle), which states that 20 percent of those involved in an activity will do about 80 percent of the work. On the Internet, one typically observes a more extreme version of this principle denoted the *participation inequality* or the 90-9-1 rule¹⁵: only 1% of the community – the super-contributors – create content, 9% edit and modify it, and 90% – the “lurkers” in the Internet jargon – just view and read. Actual communities, of course, show variations from these numbers but they do indicate what to expect. With the non-rival nature of CBPP, one would certainly expect a relatively large number of “lurkers” but such highly skewed ratios may seem surprising, not least given the attention surrounding Web 2.0. But this observation does stress that there is always a potential for increasing the active part of the community by cultivating the inactive groups. The virtuous, anti-rival circle is one where more people visiting the project increases its attractiveness leading to further participation.

14. http://en.wikipedia.org/wiki/Participatory_media; accessed September 5, 2010.

15. <http://en.wikipedia.org/wiki/90-9-1>; accessed August 4, 2010.

The super-contributors will tend to become the senior members of the community with the most trust and authority. These, in time, will often form the upper echelon of an informal or formal hierarchy based on merit. Thus, as in science, a meritocracy develops where a person can only gain status and seniority within the community through contributions that are deemed important and valuable enough by the peers.

Within FOSS, the role of meritocracy was explicitly formulated already by Steven Levy (1984) in his book *Hackers: Heroes of the Computer Revolution* as one of seven principles describing the hacker ethics. His principle number 5 states: *Hackers should be judged by their hacking, not bogus criteria such as degrees, age, race or position*. The other principles in his book stress a practical hands-on approach to computing, freedom of information, a mistrust of authorities, and computer programming as an art creating beauty.

A question often raised is why people participate in CBPP communities where most of the others are strangers. Since this is often a hobby based on “excess capacity” or “cognitive surplus”, there is seldom monetary incentives, although participation and the resulting visibility could lead to future work opportunities. Idealism and ideology certainly play a role as exemplified by the Free Software Foundation. More mundane reasons could be the need for developing or improving a certain tool to ease everyday tasks. It is evident that incentives similar to those that motivate scientists are important such as the simple joy and genuine satisfaction from the work, cf. the book about Linus Torvalds: *Just for fun: The story of an accidental revolutionary* (Torvalds and Diamond, 2001).

This is strengthened by working closely with other people sharing similar interests, even though they initially are strangers. As the contribution grows, reputation and recognition in the community also grows. In an on-line investigation by Andy Oram on the motivation for writing free software documentation, community building and the personal benefits of learning through teaching came out on top (Oram, 2007).

Knowledge about why people contribute is obviously important in designing a community. In this respect we can also draw on Ostrom (2005)’s design principles. As noted, these were developed for rival natural resources managed collectively (Common Property Regimes – CPRs). But they do provide important empirical guidelines as to how human communities work best to provide a commons based on sustainable trust and reciprocity among group members. A complete list is:

1. Clearly defined boundaries (effective exclusion of external un-entitled parties). This is not applicable to CBPP.
2. Rules regarding the appropriation (harvesting) and provision (development) of common resources are adapted to local conditions.
3. Collective choice arrangements allow most resource appropriators to participate in decision-making processes.
4. Effective monitoring by monitors who are part of, or accountable to, the appropriators.

5. There is a scale of graduated sanctions for resource appropriators who violate community rules.
6. Mechanisms for conflict resolution are cheap and easy to access.
7. The self-determination of the community is recognised by higher-level authorities.
8. In the case of larger common-pool resources (CPRs) organisation in the form of multiple layers of nested enterprises with small local CPRs at the base level.

The question of exclusion towards external parties is not relevant for non-rival CBPP projects. Neither will appropriation have to be regulated nor provisioning since that takes place on a voluntary basis. However, the other rules are relevant. Most functioning CBPP communities will already have similar rules in place. But the guidelines should be valuable when serious problems occur or one wants to establish new communities.

As emphasised by Benkler (2002), participation in CBPP communities strengthen civil society and has intrinsic democratic value. But it is well worth reflecting on why CBPP may compete well with commercial actors. In the production of intellectual goods, the critical factors are human motivation, knowledge, and creativity. This is not necessarily simple to harness in a hierarchy with formal lines of authority and bureaucratic constraints. It requires organisational costs and the result is often a lack of efficiency. The same is true for a company in the market where costs and risks are associated with decisions such as hiring or buying and outsourcing when human factors are the critical issue, cf. Benkler (2002)¹⁶. The result is a certain rigidity of structures, which has consequences that are well captured (albeit humorously) by *Conway's law* (Conway, 1968):

Organisations which designs systems are constrained to produce designs which are copies of the communication structures of these organisations.

CBPP offers advantages in these respects since people are driven by internal motivation and self-select what they want to do. The potentially strong benefits are well described by a quote from the British philosopher Bertrand Russell (1933): *Skilled work, of no matter what kind, is only done well by those who take a certain pleasure in it, quite apart from its utility, either to themselves in earning a living or to the world through its outcome.* However, there are also negative sides related to self-selection, including incompetence and vandalism. To correct for this, CBPP crucially makes use of peer review.

A possible conclusion is that both scientific and CBPP communities have arrived at the most productive modes of creative and knowledge-oriented collaboration. Science came first, and one may argue that scientific communities have strongly influenced CBPP. Such modes of collaboration have now proven extremely productive in whole new domains. This may be the way large communities of humans sharing the same interests and having various degrees of skills and commitment, can work most productively together.

16. Similar points were emphasised early by management professor Peter Drucker, who coined the term "knowledge worker" already in 1959; see http://en.wikipedia.org/wiki/Peter_Drucker; accessed August 4, 2010.

3.6 Innovation

We consider the topic of innovation separately in this section. However, the highly innovative character of FOSS and CBPP have already been mentioned several times. Given the similarity to how scientific communities work, this may not be that surprising. For instance, FOSS communities invented both the technical means to carry out distributed collaboration as well as the necessary legal framework based on standard copyright law.

The main theme of this section is to see innovation within the context of traditional production and management of goods and how this area is changing radically by “opening up” towards the surrounding environment including users and consumers. First, however, we give a short introduction to innovation and its history.

3.6.1 Background

The study of innovation as a topic in economics was pioneered by the Austrian-borne economist Joseph A. Schumpeter (1883-1950), who worked at Harvard University during the last part of his life. An excellent account of his life and work is given by Thomas McCraw (2007).

Innovation is commonly defined as *new combinations of existing resources*. Thus an innovation is different from an invention, where the latter is often defined as the first occurrence of an idea. Innovation, on the other hand, is the practical realisation of something new, possibly requiring combination of different existing resources or ideas.

Schumpeter stressed the importance of innovation as the major driving force in a market-based economy, resulting in continuous change and upheaval. He called the overall resulting process *creative destruction* (now also known as *Schumpeter's gale*). Starting with the industrial revolution in the late 18th century, it is easy to see technological innovation as the major driving force in reshaping societies. But Schumpeter had a quite broad outlook on innovation considering five types: new products, new methods of production, new sources of supply, exploitation of new markets, and new ways to organise business.

Today, innovation is considered a positive force raising productivity and improving competitiveness, resulting in improved quality of life. Most societies are therefore concerned with implementing policies that will stimulate and increase innovation. However, as the term “creative destruction” implies, innovation may have positive as well as negative and destructive consequences – at least temporarily. Not to mention the social distress and exploitation of workers during the industrial revolution, it is clear that innovation resulting in lay-offs due to outsourcing or lack of new required skills, will create hardships. However, in the longer term the general view is that innovation will result in new and generally better types of jobs and opportunities. It is also clear that in a global market economy, every country is caught in a race where lack of innovation results in loss of competitiveness, lack of development, and possible social decline.

Innovation is therefore a force a country will seek to foster and manage through various policies typically including measures such as strategic government funded research programmes, improved education, investments in infrastructure, and tax incentives. Policies

to stimulate innovation must be based on an understanding of how and where innovations originate, and how they are put to use to become parts of everyday technology, boosting productivity and growth. Schumpeter stressed some basic insights which are as relevant today in the Internet age, as when he first formulated them. He emphasised the inherent uncertainties related to whether new innovations will succeed in the market or not, as well as the need for acting quickly and not let competitors get the upper hand. Furthermore, the inertia or “resistance to new ways” confronting innovators would be a main obstacle. Thus for several reasons, innovation is a difficult force to manage. There is now a vast literature devoted to this subject. Of the many reviews that could be mentioned for those interested in a closer study, we suggest the recent book edited by Fagerberg et al. (2013): *Innovation studies: Evolution and Future Challenges*.

3.6.2 Innovation and the Traditional Management and Production of Goods – Closed Innovation

In a traditional hierarchical company producing proprietary goods, innovation has often been carried out in-house with an accompanying attitude of “not invented here” - i.e. ideas from outside are rejected because “we know our problems best and are best placed to solve them”. We will call this *closed innovation*. This typically leads to so-called sustaining or incremental innovation of existing products and procedures and may work well as long as there are not significantly different ways to do the same things. However, creative destruction may happen once new and *disruptive technologies* occur.

This is well described from a company perspective by Christensen (1997) in his book *The innovator’s dilemma - When New Technologies Cause Great Firms to Fail*. The main idea is that strong companies may fail but not because they are out-competed within their own special product range. Rather, the reason for failure is that new entrants appear with products that in the beginning may be inferior or only partially overlapping using a new technology. But if such a new technology improves over time and eventually out-compete the older one, it will be *disruptive*. The incumbent will typically feel forced to try to compete by improving its own technology through incremental innovation. Generally, it cannot afford or does not have the will also to compete in the new area. Thus, the incumbent may be locked to its original products which in the end become obsolete.

A good example of such a failure is the demise of Kodak due to digital photography. Kodak was a market leader in the traditional analogue photography industry and employed about 135 000 people at its heyday. It also started work in early digital photography but failed to follow the dual path of both fading out the analogue part while at the same time become a market leader in the digital area. After a prolonged decline, Kodak finally filed for bankruptcy in 2012 and is now restructured. Other examples abound due to Internet as a strongly disruptive technology. Taking the record industry, for example, illegal downloading of music was more of a nuisance to the record industry in the beginning. The industry stuck to their expensive CD albums while fighting piracy through political lobbying. However, with Apple’s iStore and streaming coming legally on-line, the CD is basically gone.

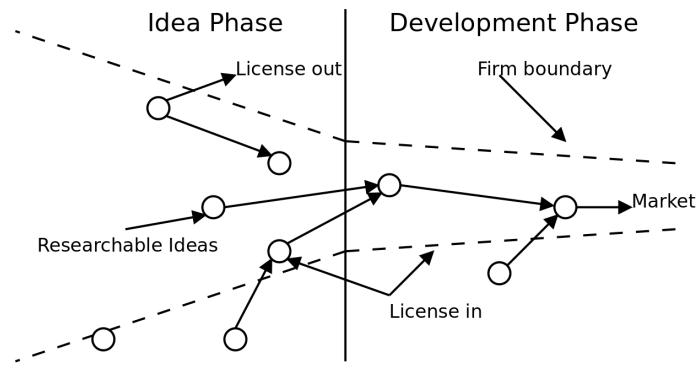


Figure 3.4. The Open Innovation Model.

Adapting to a disruptive technology is always hard for a company and it may easily go out of business or at least face a decline. The natural urge is to stick to what you have and trying to compete by improving your product through more sustained innovation. Christensen (1997) actually suggests that the best approach may be to set up an independent unit or even a separate company to pursue the new technology in competition with the parent company.

3.6.3 Open Innovation

Creative destruction and the notion of disruptive technologies lead us to the concept of *open innovation* originally introduced by Chesbrough (2003). The central idea behind open innovation is that in a world of widely distributed knowledge and independent funding available through, for example, venture capitalists (VCs), companies should not rely entirely on their own research and resources. Instead, it may be better and more cost-effective to buy or license innovations from outside the company. In addition, internal innovations not being used in a firm's business should be licensed out for others to use in, for example, joint ventures or spin-offs. These ideas are sketched in Figure 3.4.

The boundaries between a firm and its environment are stippled and have become more permeable; innovations can now both be transferred out by being shared or sold as well as being taken in from outside the company.

Chesbrough goes through several industries and describes their transition from closed to open innovation. These include areas as diverse as the consumer goods industry, such as Procter & Gamble, and the Hollywood film industry. Today, some degree of open innovation is the norm in many if not most industries. In the high-tech area, for example, both Google and IBM are embracing open innovation. Noteworthy, however, Apple seems to thrive in the closed innovation mode¹⁷.

Note that open innovation as described above does not imply an open sharing of ideas similar to FOSS. On the contrary, the setting is market-based and the sharing of IPR, in particular patents, is regulated through formal agreements.

17. <http://www.openinnovation.eu/06-12-2011/what-steve-jobs-did-not-do-for-open-innovation/>; accessed July 25, 2014

Crowdsourcing and user-driven innovation

Crowdsourcing (see Chapter 2) is one way for a company to harvest ideas from the outside. A good example is *InnoCentive*¹⁸, which is a private company facilitating crowdsourcing competitions¹⁹. Companies having problems they want to be solved can post these on the Internet through InnoCentive, which has registered an open community of solvers. Companies will normally offer a cash prize for what they consider the best solution. InnoCentive works in diverse areas including chemistry, life science, physics, and business and entrepreneurship. Issues related to confidentiality and IPR are handled by InnoCentive, which has achieved considerable success and can count *The Economist* and the scientific journal *Nature* among its partners.

Crowdsourcing is carried out through broadcasting of specific problems that a company wants to get solved. Another way for companies to harvest information from the outside is through so-called user-driven innovation (von Hippel, 2005). Here a company will systematically listen to and study users, especially early adopters of the product and power users.

Lean innovation

Lean innovation introduced by Ries (2011) may be seen as the ultimate user-driven approach to innovation. Ries advocates an experimental and interactive approach to innovation in some way resembling extreme or agile methods in software development. Both innovation leading to a new product and software development are creative processes which will not succeed by following overall pre-defined plans, i.e. a fixed business plan and a waterfall development, respectively. Thus to succeed, Ries argues one should follow an incremental product development cycle starting with a so-called Minimum Viable Product (MVP) which is rudimentary but still thought to be interesting to early adopters. The product is then refined by systematically experimenting in close interaction with the users. However, the experiments may also show that there is a need for a so-called “pivot”, i.e. the original idea turns out to be unpromising and one needs to go in a new direction.

References

- Janet Abbate. *Inventing the Internet*. MIT Press, 1999.
- Yochai Benkler. Coase’s Penguin, or, Linux and The Nature of the Firm. *Yale Law Journal*, 112:369–446, 2002.
- Yochai Benkler. *The Wealth of Networks*. Yale University Press, October 2007. ISBN 0300125771, 9780300125771.
- James Boyle. The Second Enclosure Movement and the Construction of the Public Domain. *Law and Contemporary Problems*, 66:33–74, 2003.

18. <http://www.innocentive.com>; accessed March 4, 2012

19. Other examples of companies facilitating crowdsourcing of innovation include clickworker.com; accessed March 7, 2012 and atizo.com; accessed March 7, 2012.

- James Boyle. *The Public Domain: Enclosing the Commons of the Mind*. Caravan, 2008. ISBN 9780300137408.
- Bill Bryson, editor. *Seeing further. The story of science and the Royal Society*. Harper, 2010. ISBN 9780007302567.
- Henry Chesbrough. *Open Innovation: The New Imperative for Creating And Profiting from Technology*. Harvard University Press, 2003.
- Clayton M. Christensen. *The Innovator's Dilemma: When new technologies cause great firms to fail*. Harvard University Press, January 1997. ISBN 0060521996.
- David D. Clark. A cloudy crystal ball – visions of the future. In *Proceedings of the Twenty-Fourth Internet Engineering Task Force*, page 551. IETF, July 16 1992. URL <http://ietf.org/proceedings/prior29/IETF24.pdf>. Presentation given at the 24th Internet Engineering Task Force.
- M.E. Conway. How do committees invent. *Datamation*, 14(4):28–31, 1968.
- Jared Diamond. *Collapse: How Societies Choose to Fail or Succeed*. Viking Adult, 1. edition, December 2004. ISBN 0670033375.
- Lisa Dusseault. Notes on IETF rough consensus. IETF Internet Draft, December 2007. URL <http://tools.ietf.org/html/draft-dusseault-consensus-00>.
- Jan Fagerberg, Ben R. Martin, and Esben Sloth Andersen, editors. *Innovation studies: Evolution and Future Challenges*. Oxford University Press, 2013.
- Emmanuelle Fauchart and Eric von Hippel. Norms-based intellectual property systems: The case of french chefs. *Organization Science*, 19(2):187–201, 2008. ISSN 1526-5455.
- G. Hardin. The tragedy of the commons. *Science*, 162(3859):1243–48, 1968.
- Michael Heller. *The Gridlock Economy: How Too Much Ownership Wrecks Markets, Stops Innovation, and Costs Lives*. Basic Books, 1. edition, July 2008. ISBN 0465029167.
- Charlotte Hess and Elinor Ostrom. *Introduction: An Overview of the Knowledge Commons, In Understanding Knowledge as a Commons*. MIT Press, 2007. ISBN 0-262-08357-4.
- Josh Lerner and Mark Schankerman. *The Comingled Code, Open Source and Economic Development*. MIT press, 2010.
- Lawrence Lessig. *Free Culture: The Nature and Future of Creativity*. Penguin (Non-Classics), 2005. ISBN 0143034650.
- Steven Levy. *Hackers: Heroes of the Computer Revolution*. Penguin (Non-Classics), 1984.
- Jacob Loshin. *Secrets Revealed: How Magicians Protect Intellectual Property without Law. Law and Magic: A Collection of Essays*, July 2008.

- Thomas K. McCraw. *Prophet of innovation: Joseph Schumpeter and Creative Destruction*. Harvard University Press, 2007.
- Mancur Olson. *The logic of collective action*. Harvard University Press, 1965. ISBN 0674537513, 9780674537514.
- Andy Oram. Why do people write free documentation? results of a survey. web, June 14 2007. URL <http://onlamp.com/pub/a/onlamp/2007/06/14/why-do-people-write-free-documentation-results-of-a-survey.html>.
- Elinor Ostrom. *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge University Press, 1990. ISBN 0521405998.
- Elinor Ostrom. *Understanding Institutional Diversity*. Princeton University Press, 2005. ISBN 0691122385.
- Eric S. Raymond. *The Cathedral and the Bazaar: Musings on Linux and Open Source by an Accidental Revolutionary*. O'Reilly and Associates, Sebastopol, California, 1999.
- Eric Ries. *The lean startup*. Penguin Books, 2011.
- Bertrand Russell. *The Conquest of Happiness*. Liveright, 1933. ISBN 0871401622.
- Richard M. Stallman. *Free Software, Free Society: Selected Essays of Richard M. Stallman*. GNU Press, Boston, Massachusetts, 2002.
- Linus Torvalds and David Diamond. *Just for fun: The story of an accidental revolutionary*. HarperCollins, 2001. ISBN 0066620724.
- Eric von Hippel. *Democratizing Innovation*. MIT Press, 2005. ISBN 0262002744, 9780262002745.
- James D. Watson. *The Double Helix: A Personal Account of the Discovery of the Structure of DNA*. Touchstone, 1968. ISBN 074321630X.
- Peter Watson. *Ideas: A History of Thought and Invention, from Fire to Freud*. Harper Perennial, October 2006. ISBN 0060935642.
- Steven Weber. *The Success of Open Source*. Harvard University Press, April 2004. ISBN 0674012925.

4 Free and Open Source Software



by Wolfgang Leister

According to Wikipedia (2010)¹, *free and open source software, also F/OSS, FOSS, or FLOSS (free/libre/open source software) is software that is liberally licensed to grant the right of users to study, change, and improve its design through the availability of its source code.*

Free and open source software (FOSS) covers both *free software* and *open source software*. While both follow similar development models they have their roots in different cultures, philosophies, and business models. In this current chapter we look at the different perspectives of FOSS, from a theoretical, practical, and pragmatic point of view; we cover free software with its focus on freedoms and open source as a development model-centric approach. We also cover history, social context and culture, licenses, business models, quality metrics, development processes, software and distributions. We motivate this in Figure 4.1.

Many successful FOSS projects have an impact above the software as such, as they influence an ecology of other goods. As an example, the typesetting system \TeX and the font design system METAFONT developed by Donald F. Knuth (1984, 1986), fostered the design of freely available fonts. In the context of CBPP projects many tools have been developed as FOSS, such as editing and rendering software for OpenStreetMap².

4.1 FOSS Concepts

The concept of FOSS is varying, depending on philosophical, commercial, or cultural viewpoints. However, there seems to be a common understanding of its definition, resulting in the one given in Wikipedia (2010). Each piece of software that is created by an author, and thus is subject to copyright, needs to be licensed in order to be used. The license is the vehicle for the software to become useful to others. In this license the different philosophical viewpoints may be encoded.

The most general definition of FOSS is given by the Open Source Initiative (OSI)³ which present a list of ten criteria (Perens, 1999), as shown in Frame 4.1. This list can be seen as a common denominator for FOSS.

1. We cite this definition from Wikipedia since this encyclopedia is based on the same principles as FOSS. The page where this definition is taken from is heavily discussed, and we therefore assume that the definition of FOSS given here is the result of a community effort.

2. See <http://www.openstreetmap.org>; accessed September 24, 2010.

3. See www.opensource.org; accessed September 24, 2010. The definition of FOSS and the rationales behind these terms can be found at www.opensource.org/docs/definition.php; accessed September 24, 2010.

Open source doesn't just mean access to the source code. The distribution terms of open-source software must comply with the following criteria:

1. **Free Redistribution.** The license shall not restrict any party from selling or giving away the software as a component of an aggregate software distribution containing programs from several different sources. The license shall not require a royalty or other fee for such sale.
2. **Source Code.** The program must include source code, and must allow distribution in source code as well as compiled form. Where some form of a product is not distributed with source code, there must be a well-publicized means of obtaining the source code for no more than a reasonable reproduction cost preferably, downloading via the Internet without charge. The source code must be the preferred form in which a programmer would modify the program. Deliberately obfuscated source code is not allowed. Intermediate forms such as the output of a preprocessor or translator are not allowed.
3. **Derived Works.** The license must allow modifications and derived works, and must allow them to be distributed under the same terms as the license of the original software.
4. **Integrity of The Author's Source Code.** The license may restrict source-code from being distributed in modified form only if the license allows the distribution of "patch files" with the source code for the purpose of modifying the program at build time. The license must explicitly permit distribution of software built from modified source code. The license may require derived works to carry a different name or version number from the original software.
5. **No Discrimination Against Persons or Groups.** The license must not discriminate against any person or group of persons.
6. **No Discrimination Against Fields of Endeavor.** The license must not restrict anyone from making use of the program in a specific field of endeavor. For example, it may not restrict the program from being used in a business, or from being used for genetic research.
7. **Distribution of License.** The rights attached to the program must apply to all to whom the program is redistributed without the need for execution of an additional license by those parties.
8. **License Must Not Be Specific to a Product.** The rights attached to the program must not depend on the program's being part of a particular software distribution. If the program is extracted from that distribution and used or distributed within the terms of the program's license, all parties to whom the program is redistributed should have the same rights as those that are granted in conjunction with the original software distribution.
9. **License Must Not Restrict Other Software.** The license must not place restrictions on other software that is distributed along with the licensed software. For example, the license must not insist that all other programs distributed on the same medium must be open-source software.
10. **License Must Be Technology-Neutral.** No provision of the license may be predicated on any individual technology or style of interface.

Source: © [Opensource.org](https://opensource.org/), CC-BY.

Frame 4.1. The ten rules of the OSI

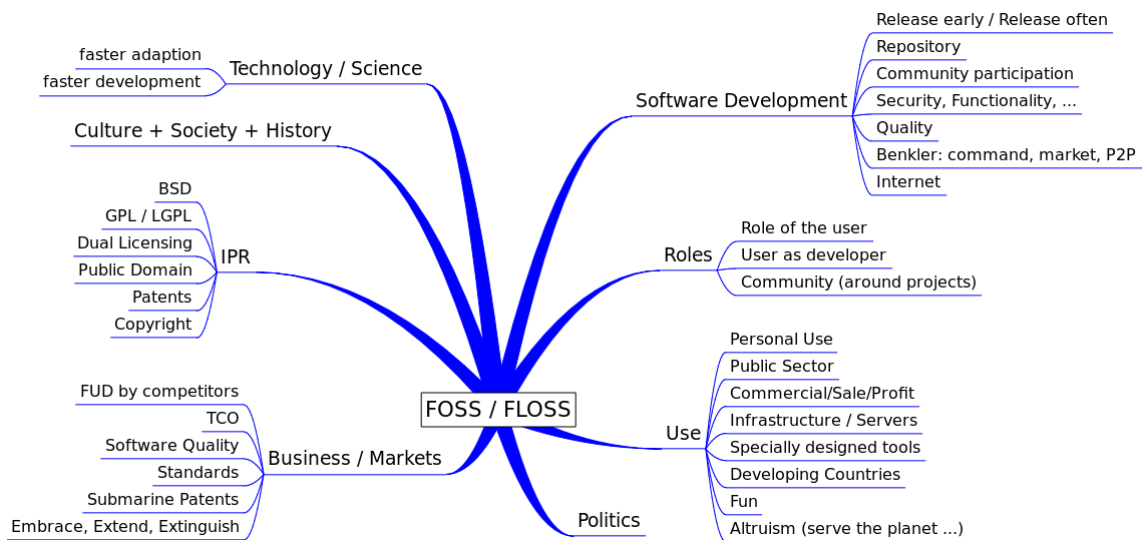


Figure 4.1. A Mindmap of FOSS and its relations

Freedom 0: The freedom to run the program, for any purpose.

Freedom 1: The freedom to study how the program works, and change it to make it do what you wish.

Freedom 2: The freedom to redistribute copies so you can help your neighbour.

Freedom 3: The freedom to distribute copies of your modified versions to others. By doing this you can give the whole community a chance to benefit from your changes.

adapted from <http://www.gnu.org/philosophy/free-sw.html>.

Frame 4.2. The four software freedoms

Many FOSS licenses fulfil the ten OSI criteria, in fact, the OSI has approved over eighty compliant licenses⁴. Some of them are liberal licenses, i.e. only attribution to the authors is required, while other licenses have more strict conditions, e.g., restrictions on what kind of licenses derivatives must have.

The Free Software Foundation (FSF)⁵ defines four freedoms for software, as shown in Frame 4.2. The freedoms to run, study, redistribute, and distribute modified versions of the software, also called the four essential freedoms⁶, must always be fulfilled, also for derivatives. To enforce these freedoms, the FSF use the copyleft, a concept introduced by Stallman (2009) around 1985.

Stallman and the FSF promote *freedom* as the main goal, for which access to the source code is a precondition to achieve Freedoms 1 and 3. In contrast, the OSI talks of *open source*, that is the access to the source code, only. Note that the ten criteria of the OSI are fulfilled for software licenses by the FSF following the four freedoms, but not the reverse.

4. See opensource.org/licenses/; accessed February 23, 2012.
 5. See www.fsf.org; accessed February 23, 2012.
 6. See <http://www.gnu.org/philosophy/free-sw.html>; accessed August 8, 2010.

Feller and Fitzgerald (2000) present an overview, taxonomy, and analysis of FOSS and its development process. In this taxonomy, FOSS is compared to products that are commercial, trial software, use-restricted, shareware, freeware, royalty-free binaries, and royalty-free libraries. The following software categories can usually **not** be considered as FOSS, since the source code is not available according to the aforementioned rules:

Freeware: The software can be used without costs. However, as long as the source code is not freely available, freeware is considered proprietary software. The freeware author usually restricts one or more rights to copy, distribute, and make derivative works of the software. The software license may impose restrictions on the type of use, e.g., personal, individual, non-profit, non-commercial, or academic use.

Nagware: as freeware, but dialog boxes remind the user that these boxes will disappear after a fee is paid.

Adware: as freeware, but the display of advertisements is used as means of “payment”.

Crippleware: as freeware, but some functionalities are restricted in the free version. After payment of a fee the restrictions are removed.

Shareware: Quite often, shareware is developed originally by enthusiasts who market their program using the shareware mechanism to earn some money. While the source code is closed, the program can be used for a trial period for free, but is subject to payment of a fee after that, if the user still wants to use the software. From a licensing-perspective, shareware is proprietary software.

4.2 Historical and Societal Context

Raymond (1999) presents the history of FOSS from his own perspective. He divides the time scale into several eras, beginning in the 1960's, to about the year 2000. To show the historical perspective, we compile a time line inspired by Raymond:

Until about 1960: The Real Programmers. The price of computers in those days were so high that they were not affordable for personal use, and only research labs (universities) and companies were able to purchase them. Raymond describes the rules of a traditional scientific community and those of large businesses at the time.

1960-1970: The Early Hackers. Mini machines, such as the PDP were used at universities, and operated by the research groups. In this environment the early hackers formed a community fostering an exchange of programs and software. The MIT scientists followed different ideas than the company DEC behind PDP, and developed the ITS (Incompatible Timesharing System) with its community of projects fostering LISP and eventually *emacs*.

The jargon files (Raymond, 1996; Steele and Raymond, 2000) are a witness from this cultural context. The ARPANET was developed from Department of Defense funding, and

created the basis for the Internet. The early hackers were heavily involved in this development process. The Internet Engineering Task Force (IETF), who still govern the Internet today, are inspired from these work principles.

1970-1980: The Rise of Unix. Ken Thompson at Bell labs was involved with the development of Multics which has common ancestry with the ITS. Multics was not a success, and Thompson started to elaborate his ideas with an embryonic version of Unix together with Dennis Ritchie, the inventor of the C programming language. Being able to write the OS in C, gave an important advantage, and Unix spread with the company AT&T, despite of the lack of any formal support for it.

1980-1985: The End of the Elder Days. The cultures around the ITS and LISP merged with the cultures around C and Unix, favouring Unix due to its portability. Richard M. Stallman, a.k.a. RMS, started to work on the GNU operating system⁷. At the same time microcomputers using the inexpensive Motorola 68000 processor were developed, followed by the foundation of SUN Microcomputers by Stanford and Berkeley scientists, using the BSD⁸ flavour of Unix.

1985: The Free Software Foundation. RMS founded the Free Software Foundation (FSF) with the goal to develop a free version of a UNIX operating system. RMS is the creator of the *emacs* text editor, and campaigned against the commercial lab culture. In the course of this effort many GNU system tools, such as the *gcc*, were developed. RMS also developed the GNU General Public License (GPL)⁹, which has its basis in the concept of the copyleft.

Stallman (2009) promoted freedom as the main ingredient; however, Stallman is not occupied with addressing economical issues. In fact, the GPL is agnostic to how business with GPL-based software is done, as long as the terms of the GPL are followed; this includes that the code is freely available, except reasonable costs for transport, and that the other freedoms are fulfilled. See also Williams (2009).

1985-1990: The Proprietary Unix Era. Several proprietary flavours of Unix were developed, such as the AT&T System V, IRIX, HP-UX, Solaris, and AIX, all claiming their share of the market. An interesting observation is that the X windows system, developed at the MIT, and given away for free won the market for graphical window systems over the proprietary Suntools. Note that the competitors, namely MS-DOS and Apple/Mac, as well as Atari and Amiga, only to some extent were able to create a community.

7. GNU stands for the recursive acronym GNU's Not Unix.

8. BSD stands for **B**erkeley **S**oftware **D**istribution.

9. See Section 4.3.

1990-1995: The early free Unixes. HURD, the operating system promoted by GNU never arrived. In 1991, the Unix derivative Minix was created by Andrew Tannenbaum as part of his operating system teachings. At the same time, in 1991, the Finnish student Linus Torvalds started to develop Linux, while other free Unix-like systems, such as BSD (by William and Lynne Jolitz), FreeBSD (Hubbard, 1995-2010), NetBSD, and OpenBSD emerged. The latter used the BSD License⁹, while Linux 1.0 was released in 1994 under the GPL.

Torvalds and Diamond (2001) tell the history of Linux, and the socio-cultural field around its development under the sub-title *The story of an accidental revolutionary*. Motivations for his actions are based on *survival – social order – entertainment*. Many characteristics of the Linux development process are much more pragmatic than those from the FSF philosophy. Eventually, both developments complement each other.

1995-2000: The great web explosion. Linux distributions like Slackware, SLS (Soft-landing), S.u.S.E, DLD, RedHat, Debian, Knoppix, and Ubuntu were commonly available on CD-ROM¹⁰. At the same time, the *great web explosion* made it possible to cooperate in creating software over the Internet. Linux became more “fit for business”, and was increasingly used in business-critical systems, especially on the servers. Contemporarily, business strategies for FOSS were discussed by Behlendorf (1999). The development methodology of the Linux kernel, often characterised with the slogan *Release early, release often*, was different from the GNU project (Raymond, 1999).

Eric S. Raymond, a.k.a. ESR, became a spokesman for open source as a business model (DiBona et al., 1999) as he founds the Open Source Initiative (OSI)¹¹. ESR has been involved in the development of software since the seventies, and has a more pragmatic approach than RMS. He combines the freedoms of FOSS with building businesses, branding the term *Open Source*.

The Halloween Documents. In the last week of October 1998, a confidential Microsoft memorandum on their strategy against Linux and FOSS was leaked to Eric S. Raymond who published and annotated this document, and also several related documents (Raymond, 1998). The original documents were authored by Vinod Valloppillil and Josh Cohen. Raymond gives credit to Valloppillil and Cohen for authoring remarkable and effective testimonials to the excellence of Linux and FOSS in general. Over time, the *Halloween Documents* consist of eleven documents.

The new millennium. FOSS is present in most areas of software production. Diverse Linux distributions are used both in the server market, and for personal applications. Web servers using *Apache*, browsers using *Firefox*, and office suites, e.g., *OpenOffice*, are

10. The distributions could be purchased, but were often available as attachments to computer magazines. These distributions also could be downloaded for those with enough bandwidth on the Internet.

11. see www.opensource.org; accessed September 24, 2010.

widely used. For most applications there is usually a FOSS counterpart. Even in mobile phones, digital TV receivers, and other gadgets there might be FOSS products involved – especially for the markets in the third world, where FOSS based mobile phones are developed for the masses.

The Culture of Commercial Software Development. Despite the claims some authors that commercial software developers do not have an own culture, several books have been published that witness to the opposite. There are several books and musings about the traditions in the “proprietary” camp, e.g., at Microsoft. Examples are: Edstrom and Eller (1999), Gates and Hemingway (2000), Gates et al. (1995), Coupland (1996), Wallace (1998a), Gates (2001), Wallace (1998b), and Wallace and Erickson (1993).

4.3 Software Licenses

A license is a permission under intellectual property laws to authorise the use of content from a licensor to a licensee. All software used by a third party, whether in source or in compiled form, needs to be under a license when used; this spares the licensee from an infringement claim brought by the licensor. This is a consequence of copyright laws, which were developed since the eighteenth century¹², and which principles are still in use today.

The license defines the terms for the distribution and use of the software. The copyright holder can choose between a variety of licenses, both commercial or open source. FOSS is released under licenses that are compliant with the criteria published by the Open Source Initiative (OSI)¹³, as outlined in Section 4.1. In Chapter 5, we show how content other than software can be licensed following the paradigms of the open-movement.

The copyright holder can perform the following actions in order to make use of his or her rights: *a)* waive all rights to the software, which has the same consequences as if the software was in the *public domain*; *b)* license the software under an appropriate license; *c)* transfer the copyrights to others, thus passing on the copyright. A copyright holder can license software multiple times within the restrictions of copyright laws, unless a separate contract or an exclusivity clause prohibits this; this principle is called *dual licensing*. Note that only the copyright holder can dual-license software. Some licenses are non-revocable – once granted, these cannot be terminated.

4.3.1 Public Domain

Software in the public domain is not covered by any copyright. The reasons for this may include: *a)* the copyright has expired; *b)* the copyright holder has waived his or her copyrights; *c)* the copyright holder is considered unknown and cannot be contacted;¹⁴ *d)* the

12. See also Section 3.1.4 of Chapter 3.

13. A commented overview of licenses for FOSS can be found at GNU.org; accessed September 24, 2010 (GNU, 2002), opensource.org; accessed September 24, 2010.

14. Note that it must be made evident that the copyright holder is unknown. Note also that there might be heirs of a creator who can hold the copyright.

software can be considered as general knowledge. The term *public domain* does not denote a license as such. Software in the public domain can be used by everybody for any purpose, even without the obligation to attribute the original author.¹⁵

4.3.2 Permissive Free Software Licenses

Permissive free software licenses, sometimes also denoted as *liberal software licenses*, have minimal requirements about how the software can be redistributed, i.e., there is no guarantee that future generations of the software will remain free. A permissive license, examples are the Berkeley Software Distribution (BSD) license¹⁶ and the MIT license¹⁷, permit that the software can be copied, modified and incorporated into both open- and closed-source software. Most permissive licenses require that credits to the authors of code within the source code and documentation are intact. For instance, the BSD license requires also that the original author cannot be sued and that the original author's name cannot be used to advertise the derivative software. It permits that the program code can be distributed in closed form, not requiring that improvements are coming back to the developer community.

While it is legally possible to create a proprietary version of BSD-licensed software, this comes at a cost, since a company doing this needs to employ staff that maintains this software. Improvements and new features created by the developer community of the FOSS project are not automatically for the benefit of the commercial branch of the software. In practice, when not enough resources are put into the proprietary branch of this software, these will have fewer features over time, thus losing market value.

4.3.3 Reciprocal Free Software Licenses

Reciprocal licenses let one benefit freely from the work of others, but they require that any modifications must be released under compatible terms, usually with the same license. This principle, also known as *copyleft*, has the goal to give *all* users of the software the freedom to carry out the activities of copying, distribution, and modification of a work. Some authors describe the reciprocal licenses as *viral* due to their self-perpetuating terms. Examples for reciprocal licenses include the GPL, the LGPL, and the MPL.

4.3.4 The GNU (Lesser) General Public License

The GPL (GNU General Public License)¹⁸ is designed to keep software free, i.e., to give the programmer the opportunity to share and change software. In addition to access to the source code, and author attribution, the GPL requires that derivative work is made available under the same conditions as the original.

In the case of the GPL, derivative work includes combining the software with other software, including linking of programs. Therefore, there are some restrictions on how to use

15. Note, however, that it is morally a good thing to give credit to the originator also if legally not required.

16. See www.bsd.org; accessed September 24, 2010.

17. See <http://opensource.org/licenses/MIT>; accessed August 18, 2014.

18. See <http://opensource.org/licenses/gpl-2.0.php>; accessed September 24, 2010 (GPLv2) and <http://opensource.org/licenses/gpl-3.0.html>; accessed September 24, 2010 (GPLv3).

software licensed under the GPL with respect to combining this software with proprietary software. This principle creates what often is called the “viral” behaviour: Software under the GPL cannot be combined with non-GPL software without this software also being under the GPL.

In order to avoid problems for businesses using FOSS products each product should be checked for compliance with respect to the licenses used. The implications for breaches of compliance can be handled by the courts, and can have an impact on the license to be used for a software product as a whole.

The GNU Lesser General Public License (LGPL)¹⁹ allows that software can be combined with other software by linking, but has in all other respects the same conditions as the GPL. The LGPL is typically used to license libraries, so that these can be combined (i.e., dynamically linked)²⁰ with all types of software.

The version 3 of the (L)GPL (GPLv3)²¹ addresses problem areas that have arisen since the publication of its predecessor, the GPLv2. The GPLv3 requires that the licensed software is either patent-free, or the patents can be implemented on a royalty-free basis. The GPLv3 also includes a clause that is designed to avoid restrictions of software imposed by the Digital Millennium Copyright Act (DMCA), the European Union Copyright Directive, and similar laws. This is further outlined in Section 4.9.

There are licenses that build on the GNU GPL, but remove certain terms relating to patents or other details. Examples for these licenses include the Eclipse Public License²² (EPL) and the Common Public License (CPL). Note that these licenses are not compatible with the GNU GPL.

The GNU Affero General Public License (AGPL) is a modified version of the GPLv3 with the additional requirement that if a program is running on a server and users communicate with it, then one must be able to download the source code corresponding to the programme that is running, including modified versions.

4.3.5 The Mozilla Public License

The Mozilla Public License (MPL) version 2.0 was published in 2012 with the goal to achieve compatibility with the GPL and Apache licenses.²³ Earlier versions of the MPL were considered incompatible with the GPL and discouraged by the FSF. The MPL 2.0 has been approved both by the FSF and the OSI.

The MPL 2.0 is a share-alike license that is defined on a file-basis. This means that each file that is under the MPL 2.0 must remain under the same license. However, covered source code can be mixed with other files under a different, even proprietary license. This makes

19. See <http://opensource.org/licenses/lgpl-2.1.php>; accessed September 24, 2010 (LGPLv2) and <http://opensource.org/licenses/lgpl-3.0.html>; accessed September 24, 2010 (LGPLv3).

20. The LGPL has a stipulation that people can re-link with own libraries, and therefore must be dynamically linked.

21. See <http://opensource.org/licenses/gpl-3.0.html>; accessed September 24, 2010.

22. See http://en.wikipedia.org/wiki/Eclipse_Public_License; accessed August 25, 2011.

23. See http://en.wikipedia.org/wiki/Mozilla_Public_License; accessed December 9, 2013.

the MPL a compromise between the permissive licenses, which permit all derived works to be relicensed as proprietary, and the GPL, which requires the whole of a derived work to remain under the GPL.

Using software covered under the MPL 2.0, new components can be implemented in separate files under an arbitrary license while the original code remains under its license. Such new files under an arbitrary license can be compiled or linked with the original software.

The MPL requires that the licensee must ensure the access to the source code covered by the MPL even if the software is distributed in binary format. However, due to the multiple licensing regime, when the MPL-covered software is combined with the GPL, the LGPL, or the AGPL, the stricter license is chosen. The MPL 2.0 also has some restrictions regarding patents: patented code under the MPL cannot be altered without special permission.

4.3.6 Dual Licensing

The copyright holder can license software with multiple licenses at the same time. This practice is often used for commercial branches of a software, or there might be patent problems or incompatibilities with parts of the software. In general, the use of multiple licenses must be carefully considered from case to case.

Dual licensing can only be used by the copyright holder. Therefore, companies using the dual licensing model will require contributors to transfer their copyrights to them. In these cases, both a FOSS version and a commercial version with additional capabilities can co-exist, using, e.g., the *freemium* business model²⁴.

Multiple licenses are used to avoid compatibility problems that can occur by various reasons. For example, Mozilla and attached projects use a tri-license consisting of the MPL, the GPL, and the LGPL by various historic reasons. To mend compatibility problems between older versions of the MPL, the MPL 2.0 was designed, but tri-license is still used to avoid re-licensing. A recent example is the case of VLC, an open source video player, that could not be distributed on the Apple app store. However, releasing the software under a double license with both the GPL and the MPL made the VLC again available.²⁵

4.3.7 License Assignment

With a license assignment, the author transfers his or her rights to another party, thus giving up the rights. This can be done for various reasons for both author and receiver of the license. Companies can require license assignment from contributors to make the *open core* business model possible. Open core is a special case of the *freemium* business model, as explained in Section 4.7.

Some open source projects require assignment of copyright for the purpose of defending that copyright, e.g., in the case of court trials when prosecuting breaches of the GPL. In or-

24. See Section 4.7.

25. See <http://beta.slashdot.org/story/189029>; accessed July 12, 2014.

der to prevent possible use of the open-core practices in the case of changes of ownership, some organisations include clauses in their assignment to prohibit open core practices, such as the Fiduciary License Agreement by the Free Software Foundation Europe.²⁶

4.3.8 Re-Licensing

Incompatibility in the licenses, and multiple licenses often require that a software needs to be re-licensed, which is tedious work. To achieve re-licensing, the entire software needs to be checked for contributions, and all contributors need to give their consent for the new license, or the contribution needs to be licensed so that it can be used even in the eventuality of a license change. Some organisations ask contributors to re-assign copyright to them in order to ease the process of possible re-licensing.

4.3.9 Shared Source

Shared source²⁷ is an initiative that covers some of Microsoft's legal mechanisms for software source code distribution. Microsoft's Shared Source Initiative, launched in May 2001, includes licenses to view and/or use the source code subject to certain eligibility criteria. The spectrum of licenses contains open source and free licenses, closed source licenses, shared source programs, and commercial licenses. The shared source licenses include:

Ms-PL: The *Microsoft Public License* allows for distribution of compiled code for either commercial or non-commercial purposes under any license that complies with the Ms-PL. Redistribution of the source code is permitted only under the Ms-PL. The Ms-PL is approved by OSI, and a free license according to the FSF, but not compatible with the GNU GPL.

Ms-RL: The *Microsoft Reciprocal License* allows for distribution of derived code so long as the modified source files are included and retain the Ms-RL. Single files that are not part of the Ms-RL licensed material can be licensed differently. The Ms-RL is approved by OSI, and a free license according to the FSF, but not compatible with the GNU GPL.

Ms-RSL: The *Microsoft Reference Source License* makes the code available to view for reference purposes only. Developers may not distribute or modify the code. The Ms-RSL is non-free, and not OSI-approved.

Ms-LPL: The *Microsoft Limited Public License* grants the rights of the Ms-PL only to developers of Microsoft Windows-based software. The Ms-LPL is non-free, and not OSI-approved, since it is not technology-neutral.

Ms-LRL: The *Microsoft Limited Reciprocal License* grants the rights of the Ms-RL only to developers for a Microsoft Windows platform. The Ms-LRL is non-free, and not OSI-approved, since it is not technology-neutral.

26. See <http://fsfe.org/projects/ftf/FLA.en.pdf>; accessed February 17, 2012.

27. See http://en.wikipedia.org/wiki/Shared_source; accessed August 25, 2011.

Ms-ESLP: The *Microsoft Enterprise Source Licensing Program* gives enterprise customers viewing access to some parts of some versions of the Microsoft Windows operating systems, without allowing modifications. The Ms-ESLP is non-free, and not OSI-approved.

Ms-WAP: The *Microsoft Windows Academic Program* provides universities with concepts and selected source code for teaching and research. The Ms-WAP is non-free, and not OSI-approved.

Ms-GSP: The *Microsoft Government Security Program* gives participating governments access to the source code for current versions of selected software. The Ms-GSP is non-free, and not OSI-approved.

MS-MVPSLP: The *Most Valuable Professionals Source Licensing Program* Microsoft makes source code available to members the Microsoft developer community, for debugging and support purposes, but not as an aid to develop a commercial product. The Ms-GSP is non-free, and not OSI-approved.

Ms-SSCLI: The *Microsoft Shared Source Common Language Infrastructure* licensing permits non-commercial modification and distribution of the source code, as long as the original license is included.

4.3.10 FOSS Compliance

FOSS compliance means that developers using FOSS must observe all copyright notices, and satisfy all license obligations for the software they are using. While the use of proprietary software is often negotiable, the FOSS licenses are not. This means that a company cannot solve licensing issues by buying a commercial license, unless dual licensing is possible. When using FOSS, companies need to deal with many different licenses that must be in accordance to the company's policies and goals in addition. If companies do not comply, license agreements, such as the GNU GPL, may become void, and law suits, delays in introducing a product, or a bad reputation might be consequences.

A set of organisational rules and structure are suggested by Haddad (2009). As building blocks for compliance management in enterprises he uses a team called open source review board (OSRB) including legal, technical and administrative personnel, policies, processes, tools, portals, training and guidelines, as well as 3rd party software due diligence²⁸. The last is necessary in the case third party contractors might use FOSS products. Haddad suggests a generic FOSS compliance process consisting of the steps of 1) scanning code, e.g., using FOSS scanning tools, 2) identification and resolution of flagged scenes, 3) architectural review, 4) linkage analysis, 5) legal review, and 6) final review. He also shows how to handle incoming FOSS compliance enquiries.

28. *Due diligence* is a term used for a number of concepts involving either an investigation of a business or person prior to signing a contract, or an act with a certain standard of care. Source: Wikipedia http://en.wikipedia.org/wiki/Due_diligence; accessed February 17, 2011.

4.4 FOSS Distributions

The term *distribution* is used for software that is bundled together in a collection, for example containing an operating system, the system setup, and a selection of application software. Collections of software are often selected with a specific theme or application area in mind, such as a desktop system, server, laptop, medical, educational, etc. Software bundles are considered as collective work. Bundling software requires that the licensing terms of the software in one bundle are compatible. Note that for such collections the GPL does not require other software to be free, as long as not linked or otherwise included in conflict with the GPL. Thus, both commercial software and software under the GPL can be included in one bundle, as long as the distributor has the permissions for the commercial software.

Several hundreds Linux distributions with an emphasis on different subjects are available²⁹. According to dictionaries, the term *distribution* refers to the commercial activity of transporting and selling goods from a producer to a consumer.³⁰ The Jargon File (Raymond, 1996; Steele and Raymond, 2000, version 4.2.3) gives the following definition:

A software source tree packaged for distribution; but see *kit*. Since about 1996 unqualified use of this term often implies 'Linux distribution'. The short for **distro** is often used for this sense.

Soon after the CD-ROM was available as a distribution medium, the *Prime Time Software for Unix* (Morin, 1993) and *PowerTools for Unix* (Peek et al., 1993) were released as distributions of software. These can be seen as early attempts to create a distribution of useful software focussing on a loose collection of tools as add-on to the operating system. A book or booklet, and specific installation programs followed with the CD-ROMs.

Today, an operating system comes packaged together with a selection of useful software. Examples for such distributions include Ubuntu, Debian, Red Hat, S.u.S.E, or several flavours of BSD. In many cases so-called live-CDs are available, making it possible to boot and run the software without installing it; lately also memory sticks can be used for booting distributions.

Early Linux-distributions were available on CD-ROM since the Internet did not have a significant penetration with enough bandwidth outside academic institutions. The distributions SLS and Slackware could be purchased by the price of a handling fee. Other distributions focused on specific goals; *Gentoo* is very customisable due to the *Portage-Technology*³¹; *SuSE*³² and *Red Hat* are commercial distributions, adding commercial software; *Fedora* is a free version of Red Hat; while *Debian* is governed by a social contract of its developers. From Debian several other distributions were derived, the most relevant being *Knoppix* and *Ubuntu*.

29. See <http://www.distrowatch.com>; accessed September 24, 2010.

30. There are other meanings of the word *distribution* which are not relevant here.

31. See www.gentoo.org; accessed September 24, 2010.

32. SUSE now is part of Novell.

4.4.1 End User License Agreement

Distributions are created for end users. Therefore a distribution contains an *End User License Agreement* (EULA), which states the licenses for the distribution, and its components. Since a distribution consists of many sub-components, several licenses might apply. The EULA states these different licenses and their terms, as well as disclaimers, and other terms of use. Note that a license, such as the GNU GPL, is not an EULA, because the copyright regulations enforce no constraints on solely running the software.

4.4.2 Packet Manager

Today, maintenance of the software usually is done by network-updates using the suitable packet management system. Technically, in addition to the operating system, and the software, a distribution needs a packet management system which is used for packaging, installation, update and maintenance of the entire system. For Linux distributions, two major packet management systems are predominant: *rpm*³³ for Red Hat, Fedora, SUSE, Mandriva, etc; and *dpkg* and *apt* using the *deb* format for Debian, Ubuntu, Knoppix, etc. Note that other packet management systems are available, e.g., Portage for Gentoo.

4.4.3 Distribution Planning

The major distributions tailored for the end-user market face requirements similar to commercial products. If these requirements are not met, history has shown that this distribution will be less used, and other distributions will be used instead. Therefore, distribution planning, release management, packet management system, and logistics around a distribution are essential.

Michlmayr (2007, 2009) and Michlmayr et al. (2007) point out that *release management*, i.e., the process when and how often to release new versions is a major part of distribution planning.³⁴ Since a distribution contains a large number of software packages, the major software packages of a distribution need to have a more or less synchronised release management, in order to be able to keep a distribution consistent. A distribution lives from presenting fresh software, such as new releases of the graphical user interface (e.g., KDE, Gnome, Unity), which requires the release dates to be aligned. A regular release plan of software is becoming more and more common.

4.4.4 Debian

Debian was first announced on 16 August 1993 by Ian Murdock, as a reaction to the perceived poor maintenance of the then dominant SLS Linux distribution. He released the Debian Manifesto, to ensure a non-commercial Linux distribution. In 1996, the first version of Debian was released; Bruce Perens took over as project leader, and Ean Schuessler suggested that Debian should establish a social contract with its users (Perens and Debian, 1997). Establishing a social contract was in contrast to the commercial Linux distributions (Perens, 1999).

33. See www.rpm.org; accessed September 24, 2010.

34. See also www.nuug.no/aktiviteter/20070508-reلمان-freeproproj; accessed September 24, 2010.

The Debian project is founded on three documents: 1) the *Debian Social Contract* defines a set of basic principles by which the project and its developers conduct affairs; 2) the *Debian Free Software Guide* which defines criteria for software permissible in the distribution; and 3) the *Debian Constitution* which describes the organisational structure of the project.

4.4.5 Commercial Distributions

Commercial distributions, such as Red Hat and SuSE, base their software on FOSS. However, they may add commercial products with commercial licenses. These products may include specific drivers, application software (e.g., niche-oriented such as film editing, accounting, virtualisation), software that handles patented data format codecs, etc. Therefore, some of the commercial distributions can offer better support for some purposes.

The different licenses are usually referred to in the EULA. As long as the terms of the licenses of the single products are not breached³⁵, it is legally allowed to present a mix of FOSS and commercial software in a distribution. The use of the LGPL for libraries is essential for being able to include software libraries.

There are some discussions whether mixing commercial software and FOSS in one distribution is a good thing. On one side, the end user gets a service that would not be available using only FOSS, while on the other side, there are less incentives to keep software free, or use a FOSS alternative.

The commercial distributions often bundle their FOSS with several types of subscriptions, offering support, and additional software in a premium version that needs to be purchased. Lately, various cloud services using a freemium-model are easily accessible in some distributions, such as Ubuntu-One for Ubuntu. More on business-models suitable for free software can be found in Section 4.7.

Around a commercial distribution, often a company has interests while the efforts of a community are less predominant. In order to avoid the loss of a supporting community which is important for the further development, some distributions have split their efforts into a commercial distribution, and a free distribution. In this spirit, Red Hat has created Fedora as a free distribution.

4.5 The Development Process of FOSS

According to Benkler (2002) the production of goods such as software is based upon three different models; 1) managerial command systems like firms or organisations, where hierarchies define the line of command; 2) markets, where the concept of transaction costs define the production; and 3) peer production, where other incentives govern than in the other two models, and which is based on decentralised information gathering and exchange. We have already discussed the Commons Based Peer Production (CBPP) and its characteristics in Chapters 2 and 3.

35. It is not allowed to include a GPLed software library that links to a commercial programme in a distribution.

FOSS can follow the CBPP paradigm, or be governed by other development principles, such as one developer coding the entire code base of a product. However, software products that are alive, and have a community gathered around the code base, often use CBPP or related methods. The development process of FOSS following CBPP is different from the development process of projects following other paradigms. FOSS can follow different development processes depending on the type of the project, independently of the license. However, giving access to the source code gives users the opportunity to give feedback and code suggestions to the developers.

The text editor *GNU Emacs* is an example of a FOSS project that has been driven as a managerial command system, with RMS as project architect and as project manager.³⁶ This gives other developers only a limited influence. Consequences can be a project split³⁷, as Raymond (1999) remarks. Linux is an example of projects that use CBPP. These projects are managed differently; However, there is the need for a different structure so that projects can scale. Successful CBPP-based FOSS projects need a suitable communication infrastructure, including source code repository and wiki. Another characteristic is that the granularity of tasks, that is that the tasks have a limited size and complexity so that these can be managed independently. Additionally, the general principles for successful CBPP projects, as outlined in Section 3.3, need to be obeyed.

In FOSS projects the project owners are responsible for coordination of many volunteers, maintain a database, take decisions, perform some of the programming, etc. Users of FOSS applications can suggest changes in the software, and thus contribute to further development. For most of the projects web pages are available, including possibilities for download, information on the project, communication between developers, addresses for reporting bugs, etc.

There are sites that host many projects as an infrastructure. These include, e.g., Sourceforge³⁸, Savannah³⁹, gitorious⁴⁰, github⁴¹, or CodePlex⁴². The distribution model for FOSS is often based on web servers with download-facilities, and the Internet as an infrastructure. Note that some of these sites might have restrictions on the applicable FOSS licenses, and the nature of the product.

36. It appears that GNU Emacs now is developed by a team as a look at the commiter list for the Emacs code repository shows. See <http://git.savannah.gnu.org/cgi/emacs.git>; accessed August 30, 2011. Many contributors have commit-access. Also, RMS handed over the Emacs project leader position some years ago. See <http://lists.gnu.org/archive/html/emacs-devel/2008-02/msg02140.html>; accessed August 30, 2011. In the same communication, RMS comments that: *This is the fourth time that the Maintainer of GNU Emacs has been someone other than me. Previous maintainers include Joe Arceneaux, Jim Blandy, and Gerd Moellmann.* We thank Håkon Stordahl for commenting this.

37. Examples of this are the *GNU Emacs* and *XEmacs* split; or the *NetBSD* and *OpenBSD* split; or the *OpenOffice* and *LibreOffice* split.

38. See <http://www.sourceforge.net>; accessed September 24, 2010.

39. See <http://savannah.gnu.org>; accessed September 24, 2010.

40. See gitorious.org; accessed October 1, 2010.

41. See github.com; accessed October 1, 2010.

42. See <http://en.wikipedia.org/wiki/CodePlex>; accessed August 25, 2011.

4.6 Costs of FOSS

Even though FOSS is available for everybody to access, view and use, it is not necessarily without costs. Note that there may be differences in the cost structure for personal use and for use in an enterprise. For users, the costs of FOSS arise in accessing the software, installation, maintenance, royalties for licenses, building the necessary infrastructure, implementation of additional functionality, and so on.

The *total cost of ownership* (TCO) includes all the above mentioned costs, and provides an economic metric to compare different FOSS-based systems with commercial alternatives. TCO is a management accounting concept with the purpose to help consumers and enterprise managers determine direct and indirect costs of a product or system. All software has a TCO which includes the sale price, any hardware and software upgrades, maintenance and technical support, and training. Note that some costs, such as time and frustration may be hard to measure. These components of TCO should be part of the decision to use any software: *a*) price, *b*) opportunity costs, and *c*) other costs.

Perry and Gillen (2007) discuss a seven-step process for understanding, measuring, and articulating the business value of an IT-project. When establishing the TCO, they divide the costs into six different categories based on 300 interviews:⁴³ 1) staffing (69%); 2) downtime – user productivity (15%); 3) IT staff training (8%); 4) server hardware (7%); 5) software (7%); and 6) outsourced costs (3%). Note, however, that the impact of these categories differs between type of projects, enterprise, purpose, etc. Therefore, exact numbers that are valid in general are difficult to establish.⁴⁴

Open source proponents claim that even if open source requires more expertise, the TCO is ultimately lower. Proponents of the commercial business model claim that the required expertise is daunting and other costs of proprietary solutions are exaggerated.⁴⁵ This is illustrated in Figure 4.2.

There have been long-lasting discussions whether open source products or commercial products are better, and which of these has a lower TCO. Not surprisingly, it is easy to find for each product a report and calculation that positively supports this product. Wheeler (2007) lists in Chapter 7 of his document many examples that support either open source or commercial products with respect to lower TCO.⁴⁶ Wheeler also argues apart from TCO that FOSS is worth using. We also refer to another document that shows the positive sides of FOSS regarding the TCO (acronym SA).

43. The percentage numbers in parentheses denote the the division for this item as presented by Perry and Gillen (2007).

44. The whitepaper by Perry and Gillen (2007) was performed by the International Data Corporation (IDC) (see <http://www.idc.com>; accessed February 17, 2012), and sponsored by Microsoft. The data presented in this whitepaper were used by Microsoft to argue that open source products like Linux have a higher TCO than corresponding Microsoft products.

45. See http://www.netc.org/openoptions/pros_cons/tco.html; accessed August 7, 2011.

46. David A. Wheeler appears as a supporter to the open source movement.

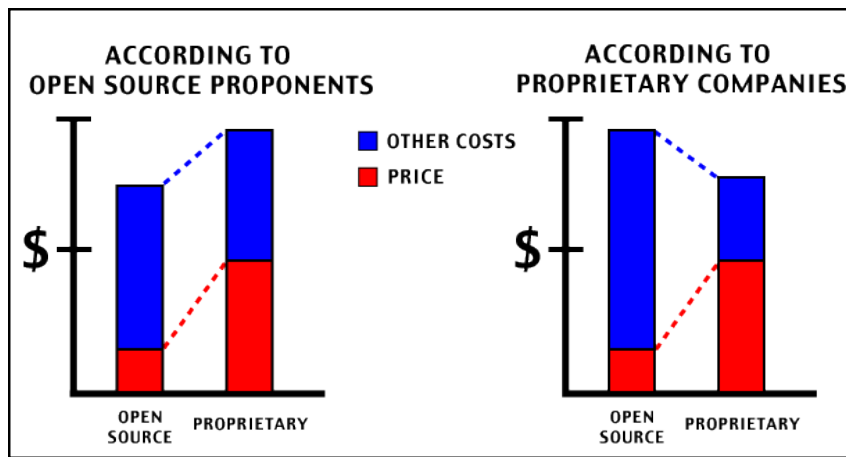


Figure 4.2. Open source proponents and proprietary companies disagree on the total cost of ownership. Developed by the Northwest Regional Educational Laboratory, Portland, Oregon.

4.7 FOSS Business Models

Despite FOSS being available at little cost, and possible to copy at low cost, the FOSS industry is a growing multi-billion Euro industry. The exact number is difficult to verify since many of the enterprises get their income from additional sources beyond FOSS. Companies like Red Hat, SuSE (Novell), SugarCRM or Canonical, and associations, like the Mozilla Foundation or the Apache Foundation, fill important shares of the market for products in information technologies. Large enterprises, such as IBM, Google, Nokia, Apple or Oracle use FOSS actively in their portfolio, but do not base their business models solely on FOSS. It is evident that commercial business models that are based on the sale of licenses are not viable. For most enterprises, FOSS business models are based on some kind of cross-subsidisation.

A business model describes the rationale of how an organisation creates, delivers, and captures value in the form of economic, social, or other metrics.⁴⁷ The process of developing a business model is part of a business strategy. Osterwalder (2004) presents an ontology of business models. A large variety of business models has been developed over time, such as *razor and blades*, *bricks and clicks*, *collective*, *cutting out the middleman*, *direct sales*, *franchise*, *fee in – free out*, *monopolistic*, *premium*, and so on. Since general business models are beyond the scope of this chapter, we refer to the survey by Zott et al. (2010) for further reading.

Anderson (2009) points out that the costs for production and distribution of FOSS are very low, and tend to converge towards zero. This is the starting point of what he calls the *bits economy* where goods can be obtained for free. However, in order to create a substantial industry, business models need to be in place. In the following, we present business models relevant to FOSS.

47. See http://en.wikipedia.org/wiki/Business_model; accessed January 14, 2012.

Cost Reduction. FOSS can be used to reduce costs in enterprises and public entities, also in those that are not directly involved in software development. FOSS can be used for supporting services such as accounting, web profile, public relations activities, and so on. Here, the discussion on TCO as outlined in Section 4.6 comes into the picture. Note that these enterprises often contribute to the development of the FOSS products they use.

In the cost reduction model, it is essential that the main revenue of the enterprise does not come from the sale of the software in question. Thus, this software is more a vehicle to increase the main source of income, such as sale of non-software products.

It is said that Sun Microsystems had cost reductions due to reduced license payments in mind when they acquired StarDivision in 1999, as well as trying to reduce the market shares of their competitor Microsoft. At that time, the development costs of OpenOffice appeared to be less than the license payments for Microsoft Office products.

Services. Many enterprises offer services that are based on FOSS. These services might include hosting of files; hosting and serving web content; music, images and video content; services for accounting; text processing; and services in the cloud, including the layers infrastructure as a service (IaaS), platform as a service (PaaS), and software as a service (SaaS). Note that the GNU Affero License addresses issues arising from SaaS, as outlined in Section 4.9. Often, a freemium business model is used.

Support and Consulting. Even though FOSS is available for free, enterprises can charge for support, maintenance, and consulting. Typically such services are offered for customisations to the specific needs of a customer. Revenue can also come from education and courses on FOSS and specific products.

Enterprises that successfully implement this business model often distribute software without charging for it. Many of these enterprises derive revenues from support services and training for corporate customers who run mission-critical business systems on this platform. Canonical Ltd., who developed the *Ubuntu* distribution, represent this business model. There are several examples for enterprises that sell support and consulting services, independent from a specific product that they own, such as Linpro or Freecode⁴⁸.

Direct Cross-subsidisation (Loss-Leader). A *loss leader*, or simply a leader, is a product sold at a low price, often below cost or without charges, to stimulate other profitable sales.⁴⁹ According to Anderson (2009), this model has been used for over a century for traditional products. Often, the free or subsidised product can only be used together with another product that needs to be purchased. In other cases, the free product is used for promotion purposes only. Another variant is the *buy two – get one free* model. Examples

48. See linpro.no, resp. freecode.no; accessed March 5, 2012.

49. See http://en.wikipedia.org/wiki/Loss_leader; accessed January 15, 2012.

for this business model related to FOSS includes IBM who distribute the software product *Eclipse* in order to strengthen their brand, and to attract paying customers for their other products.

Freemium. In the freemium model⁵⁰ an enterprise offers a range of products or services for free while improved or extended versions can be purchased for a price. Generally, only a small fraction of the customers needs to sign up for the premium version in order to create a sustainable business model; typically, less than 5% of paying customers subsidise the costs of both the free and the premium version (Anderson, 2009). The term *freemium* has apparently been defined in 2006 by Fred Wilson and Jarid Lukin in a blog discussion. Wilson defines freemium as:⁵¹

Give your service away for free, possibly ad supported but maybe not, acquire a lot of customers very efficiently through word of mouth, referral networks, organic search marketing, etc., then offer premium-priced value added services or an enhanced version of your service to your customer base.

The freemium model is not only applicable to FOSS, but to all kinds of products. A variant of the freemium model is used by enterprises who offer price-reduced early versions of a product for users who in turn provide feedback that will be incorporated in the premium version of this product. Enterprises using the freemium model can reduce their cost for marketing, development and testing, which they also tend to have a high innovation rate.

The freemium model can only work if the customer receives an added value for the price he or she pays. This can either be achieved by closing down parts of the source code, or by offering goods or the use of an infrastructure that comes with a price.

The freemium model works well for services that are based on FOSS. Here, an enterprise offers services based on FOSS on an infrastructure that they own and maintain. Often, hosting services and software as a service targeting certain applications are candidates for the freemium model. Examples include text processing, accounting, and hosting-services where certain functionality and volumes up to a certain amount are free, while extended functionality and larger volumes are paid services. In some cases enterprises offer dual-licensed products to users for free, often with terms for non-commercial use, while commercial users need to pay a price to use this software in their products or services.

Dual Licensing. Many FOSS enterprises present their business model to be *dual licensing*. However, dual licensing is considered more a tool to support other business models than a separate business model. Business models building on dual licensing include freemium, and open core. Meeker (2005) outlines how the business models using dual-licensing work.

50. freemium = free + premium.

51. See http://avc.blogs.com/a_vc/2006/03/my_favorite_bus.html; accessed January 15, 2012.

Open Core. Open Core⁵² is a practice, where companies use a combination of dual-licensing, closing parts of the source code, and the *freemium* business model. In this case, the company often maintains a dual-licensed software that represents some type of middleware that opens up for extensions, such as plug-ins. The open core principle works only for permissive licenses, or when copyright assignment is used.

The GPL together with copyright assignment can be used to effectively prevent others from competition: Contributors to software using open core can choose only to release under the GPL, in which case the company behind the product will not include the change. However, when assigning copyrights, the contributor has the same rights as any other GPL licensor while the company can use this code both for GPL and proprietary licenses. This effect is not intended by the design of the GPL.

Packaging and Simplification. Enterprises that use this model typically develop installers around complex software that requires many advanced settings for installation. While the end-user is free to install and configure the software manually, the revenue comes from selling the specially tailored installer. However, many of the enterprises using this model have failed to scale economically. Another threat to this model may come from distribution developers or communities who provide such installers as FOSS.

Hardware. Software in hardware appliances, such as routers, TVs, smart-phones, net-pads, diverse machines, etc. are often based on FOSS. Using FOSS instead of developing a specially tailored (operating) system reduces development costs drastically since much of the development is done by a FOSS community. Additionally, the enterprise may receive feedback from a community and the users, as well as fixes, new ideas, and so on.

Widget-frosting. Enterprises that sell hardware provide drivers as FOSS. Thus, hardware drivers can be adapted to other target systems by a community. While an enterprise may not get a revenue directly from selling the driver software, this contributes to making the hardware available for many platforms without increasing the development costs. In many cases, the drivers and application software can be downloaded from supporting web sites both in binary form and as source code. Widget-frosting is used for hardware such as printers, scanners, USB- and Ethernet controllers, storage controllers, etc. to support Linux users.

Note that some manufacturers only release a binary version of their drivers at no cost. These can be linked into the operating system or into the system software using a defined interface. In this case, the software is not available as FOSS, but the hardware can be used in FOSS-based systems.

52. See http://en.wikipedia.org/wiki/Open_core; accessed December 22, 2011.

Accessorising. This business model is often used by foundations or businesses to promote FOSS and to support communities. They offer accessories such as coffee mugs, T-shirts, manuals, books, compatible hardware, systems with FOSS pre-installed, and other related accessories. The publisher O'Reilly Associates, Canonical, and many of the well-known FOSS communities follow this model.

Advertising and Search Forwarding. Some enterprises and foundations offer space for promotion, advertisements, and forwarding of searches. As an example, the Mozilla foundation gets a large part of their income from search engines, such as Google. By forwarding searches in the Firefox web browser to a specific search engine, the Mozilla foundation gets a revenue from the search engine owner.⁵³

Donation-based Model for Non-profit Foundations. Foundations, such as the Mozilla foundation, the KDE foundation, the FreeBSD foundation, or the Software Conservatory, allow users and organisations to offer donations. These donations are used to fund and extend community activities.⁵⁴

FOSS Business Models in Developing Countries. Developing and transition countries have often a social and societal profiles where local ownership, local value addition, empowerment and participation can be beneficial. FOSS business models can be suited to sustain this, as proposed by InWent (2011). In another document, InWent (2010) presents teaching material for FOSS business models in Africa.

4.8 FOSS Quality Models

by Arne-Kristian Groven and Wolfgang Leister

Quality assessment is used to evaluate both business critical and personal software. FOSS quality models differ from traditional software quality models since, due to their inherent transparency, the source code can be examined and characteristics of the development process can be evaluated. A current research focus is using data available on the Internet to assess FOSS. Lately, tools and methods for assessing FOSS software, based on measuring data available on the Internet, have been a research focus. The terms FOSS quality (and maturity) model and FOSS quality (and maturity) assessment appear in the literature to describe such methods. In this section, we review traditional quality models and two generations of FOSS quality models.

4.8.1 Traditional Software Quality Models

Quality assessment of software can be approached from a number of angles. The perspectives of quality (Garvin, 1984; Kitchenham and Pfleeger, 1996) include: (i) User view on

53. This deal has caught much attention lately, since it has been re-negotiated in December 2011; see <http://blog.mozilla.com/blog/2011/12/20/>; accessed February 23, 2012.

54. Also foundations offering open content, such as Wikipedia, use the donation-based model.

quality: Focus on software that meets the users' needs, where reliability, performance, efficiency, maintainability, and usability are core issues. (ii) Manufacturing view on quality: Product quality is derived from conformance to specification and organisations capability of producing software according to defined software processes. Defect-count and staff effort rework costs are examples of relevant issues within this view. (iii) Product view on quality: Focus on specifying that the characteristics of products are defined by the characteristics (size, complexity, and test coverage) of its sub-parts, including component complexity measures, design, and code measures.

In the last four decades, control and understanding of the quality of software products and their making have been approached from two directions, the *quality management approach* and the *quality model approach*. Within the category of quality management, we mention Deming's quality management approach (Deming, 1988), Crosby's quality management approach (Crosby, 1979), Feigenbaum's approach (Huggins, 1998), and Weinberg's quality management approach (Weinberg, 1994).

The quality management approaches represent a more flexible and qualitative view on quality; the quality models represent a more fixed and quantitative view (Robson, 2002). Quality models that measure adherence to the process or capability level include the variants of the proprietary *Capability Maturity Model* (Paulk et al., 1993), CMM, including CMMI-SE/SW, ISO/IEC 15504 (Loon, 2007), and ISO9001 (International Standards Organisation, 2000). Quality models focusing around a set of attributes and metrics distinctively assess quality by making quality a quantifiable concept. These include the McCall model (McCall et al., 1977), the Boehm model (Boehm et al., 1976, 1978), and the product quality standard *ISO 9126-1:2001, E* (International Standards Organisation, 2001). ISO 9126 is based on Boehm's and McCall's models. In ISO 9126 six quality characteristics are defined: a) functionality, b) reliability, c) usability, d) efficiency, e) maintainability, and f) portability. Each of these characteristics has a set of sub-characteristics. For example, reliability has the sub-characteristics maturity, fault tolerance, recoverability, and reliability compliance. The measured values of each sub-characteristic gives a metric for the characteristics (Jung et al., 2004).

The traditional software quality models have a history of nearly four decades. As traditional quality models originate in the context of traditional software industry and its proprietary business models, FOSS characteristics are not covered by such models.

4.8.2 First Generation FOSS Quality Models

The first FOSS quality and maturity models have emerged between 2003 and 2005. Among the first generation FOSS quality models are: (i) the *Open Source Maturity Model*, OSMM Capgemini, provided under a non-free license (Duijnhouwer and Widdows, 2003); (ii) the *Open Source Maturity Model*, OSMM Navica, provided under the Academic Free License (Golden, 2004); (iii) the *Qualification and Selection of Open Source software*⁵⁵, QSOS, provided by Atos Origin under the GNU Free Documentation License; and (iv) the *Open*

55. See <http://www.qsos.org/>; accessed November 20, 2010.

*Business Readiness Rating*⁵⁶, OpenBRR, provided by Carnegie Mellon West Center for Open Source Investigation, made available under the Creative Commons BY-NC-SA 2.5 License. These quality models draw on traditional models which have been adapted and extended to be applicable to FOSS.

All models are based on a manual work, supported by evaluation forms or templates. Data gathering and evaluation are manual work processes. The most sophisticated tool support can be found for QSOS, where the evaluation is supported by either a stand-alone program or a Firefox plug-in, which also enables feeding results back to the QSOS website for others to download.

As of 2010, none of these FOSS quality models have seen a wide adoption and they cannot be considered a success, though the QSOS project shows a slow growth in popularity (Wilson, 2006b). The OSMM Capgemini model has a weak public presence for the open source community; for the OSMM Navica model the web resource are no longer available, while OpenBRR for a long time has had a web site announcing that a new and better version is under way.

The reasons for this lack of success are probably a combination of the following (Groven et al., 2010): (i) The approaches have shortcomings; (ii) the knowledge about the approaches are not properly disseminated; (iii) the success stories are not properly disseminated; and (iv) the business expectations of the originators of these models were possibly unrealistic. Despite of shortcomings and lack of community support, we believe that these quality models could play a role when evaluating candidate FOSS. These beliefs are supported in literature, e.g., by Wilson (2006a). There are some success stories, such as the Open University's use of OpenBRR to select a Virtual Learning Environment (Sclater, 2006). The fact that several enterprises use OpenBRR, underlines its potential role. Further, the simplicity of a first generation FOSS quality and maturity model is intuitively appealing and may have some advantages compared to second generation models.

4.8.3 Second Generation FOSS Quality Models

A second generation of FOSS quality models has emerged, partly as a result of several EU-funded research projects. They all draw on previous methodologies, both traditional quality models as well as the first generation FOSS quality and maturity models. Two main differences between the first and second generation FOSS quality models are more extensive tool support and more advanced metrics.

Second generation quality models include (i) the *QualOSS quality model*⁵⁷ – a semi-automated methodology for quality model drawing on existing tool support, explained in greater detail in this text; (ii) the *QualiPSo OpenSource Maturity Model (OMM)*⁵⁸, a CMM-like model for FOSS. QualiPSo OMM focuses on process quality and improvement, and only indirectly on the product quality (Qualipso, 2009). The project aims at provid-

56. See <http://www.openbrr.org/>; accessed November 20, 2010. Currently, the original content at this web site is not available, and replaced by a short information page.

57. See www.qualoss.org; accessed November 20, 2010.

58. See www.qualipso.org; accessed November 20, 2010.

ing supporting tools and assessment process together with the OMM. QualiPSo draws on traditional quality models, in this case CMM. (iii) The SQA-OSS quality model⁵⁹ by the Software Quality Observatory for Open Source Software is a platform with quality assessment plug-ins. SQA-OSS has developed the whole assessment platform from scratch, aiming at an integrated software quality assessment platform. It comprises a core tool with software quality assessment plug-ins and an assortment of user interfaces, including a web user interface and an Eclipse plug-in (Samoladas et al., 2008). The SQA-OSS is being maintained, but the quality model itself is not yet mature, and developers focus mostly on an infrastructure for easy development of plug-ins.

4.8.4 Example of a First Generation Model: OpenBRR

The *Open Business Readiness Rating* model, OpenBRR, is a first-generation model. It consists of a set of themes or categories each containing a set of metrics. These categories are spanning the different quality dimensions of an OpenBRR assessment. There are 27 unique and generic metrics to be applied on each types of software to be assessed by the model. In addition, functionality specific metrics have to be tailor-made for each class of software to be assessed.

A high-level view of the usage of the OpenBRR model for evaluating FOSS consists of the following three steps: 1) Creating a shortlist of candidate software to be assessed. 2) Determining the relative importance of the categories and metrics. 3) Manually obtaining the data for the metrics. OpenBRR uses a manual process that aims to be complete, simple, adaptable, and consistent.

A spreadsheet template is the only OpenBRR tool support available when creating a business readiness rating. Measured data are registered in the spreadsheets, and the BRR scores are automatically computed based on these data.

Quality categories and their weights. A set of quality categories or dimensions are predefined within OpenBRR. Associated with each category is a set of metrics. All metrics are predefined and generic in their nature, except for the “Functionality” category which requires specific software features of interest to be added into the sheet. As can be read from Table 4.1, weights are associated with each of the categories. The weights can be freely set by the BRR evaluator. Categories that are important for business critical applications might be given a higher weight. It is also possible to limit the scope of the evaluation to only cover a subset of the categories.

Metrics, scores, and metric weights. Various metrics are associated with each of the categories. The number of metrics is relatively small. 27 unique metrics are defined to cover all the six categories, in addition to the user-provided metrics associated with the “Functionality” category. Two of the metrics are used in two categories, while the others are associated with only one category each. Each of the metrics defines what to measure

59. See www.sqa-oss.eu; accessed November 20, 2010.

	<i>Category</i>	<i>Description</i>	<i>Weight</i>
(1)	Functionality	Features offered by the software.	25%
(2)	Operational Software Characteristics	Metrics concerning user experience, security, performance and scalability.	15%
(3)	Service and Support	Metrics describing availability of professional and community support.	25%
(4)	Software Technology Attributes	Metrics describing technical architecture, release cycle and code quality (bug statistics).	10%
(5)	Documentation	Metrics describing the availability and quality of documentation.	10%
(6)	Adoption and Community	Metrics describing the activity of the community and existence of reference installations.	10%
(7)	Development Process	Metrics for stability and quality of project driver and code contributors.	5%

Table 4.1. Example of categories and weights of a BRR assessment

and how to transform the measured values into scores. These are predefined as test score specifications. For the functionality category, the evaluator can choose the actual features and set their importance (1-3). Note that test score specifications are not defined for the functionality features; thus, the scores are based on subjective evaluations.

To illustrate the metrics, we choose one from the sub-category “Security” which is part of the category “Operational Software Characteristics”. The definition of what to measure is described as follows: “Number of security vulnerabilities in the last 6 months that are moderately to extremely critical” having the associated test description “This measures the quality related to security vulnerabilities. How susceptible the software is to security vulnerabilities.” The test score specification is as follows (score 5 is best, score 1 is worst):

1	More than 6 (“Unacceptable”)
2	5 - 6
3	3 - 4
4	1 - 2
5	0 (“Excellent”)

The five-value scoring range is typical among the 27 generic metrics. In some occasions, a three-value range is used, as illustrated in the following metrics: “Difficulty to enter the core developer team”, with the following test description: “To ensure software quality, mature projects must be selective in accepting committers. New projects often have no choice”. Here, the test score specification is defined as follows:

1	Anyone can enter;
3	Rather difficult, must contribute accepted patches for some time;
5	Only after being active outside-committer for a while.

Within OpenBRR, it is not possible for the evaluators to change any of the 27 test score specifications or add new ones. One can freely set the relative importance for each set of metrics within any of the categories.

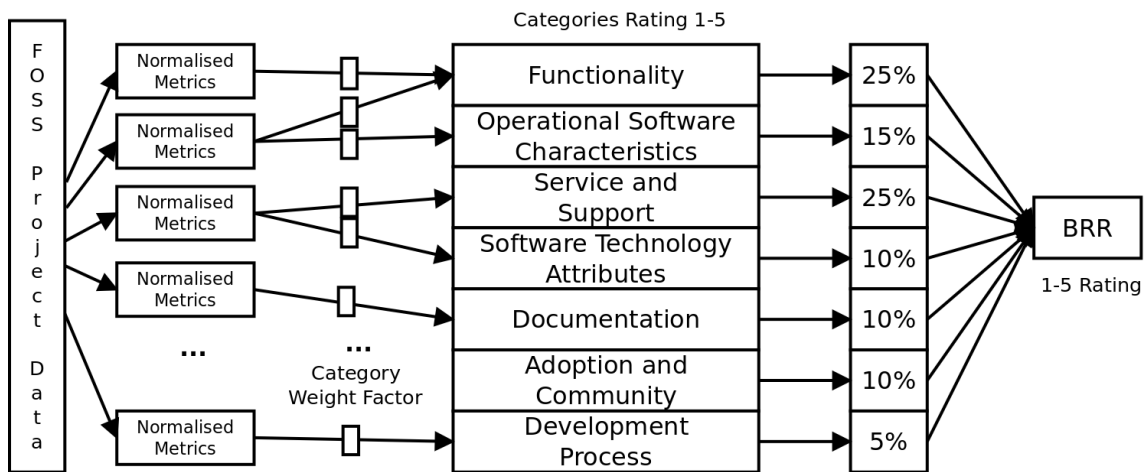


Figure 4.3. The Business Readiness Rating Model

OpenBRR work- and information flow. As a first step, the OpenBRR evaluation sheet needs to be configured to fit into the business context in which the evaluation shall take place. This is done by setting weights, both for the categories and the metrics within each category. When a measurement is registered in the OpenBRR sheet, a score will be calculated according to the predefined test score specifications.

For the “Functionality” items the feature set of interest is first identified. Each item under “Functionality” is subjectively evaluated without any associated test score specification. The evaluator needs to have profound technical knowledge on requirements and technology. Each feature receives a score within a certain range that is further aggregated into an overall functionality score.

An overall score is finally aggregated from the category scores and their relative importance as illustrated in the example in Figure 4.3. Quality assurance should always be performed on a BRR before it is considered completed. Errors in the formulas of the spreadsheet can easily be introduced, weights miscalculated, information sources excluded, etc.

Since the OpenBRR model does not provide any tools for data mining, all data must be collected manually. An OpenBRR assessment is fully depending on the knowledge and ability of the evaluator to find the right data on the Internet. Various mailing lists, bug trackers, databases, and web sites for harvesting data must be identified, both specifically related to the FOSS project at hand or third party. Examples of the latter are, e.g., www.secunia.com as a source for information on number of critical security issues or Amazon.com as a source for information about publications.

4.8.5 Example of a Second Generation Model: QualOSS

QualOSS provides a high-level methodology for benchmarking the quality of FOSS, focusing on benchmarking the *Evolvability* and *Robustness* of FOSS (Deprez et al., 2008). **Robustness** is defined to be the capability that the FOSS endeavour displays in solving past and current problems. **Evolvability** is defined to be the capability that the FOSS endeavour will likely display in solving future problems.

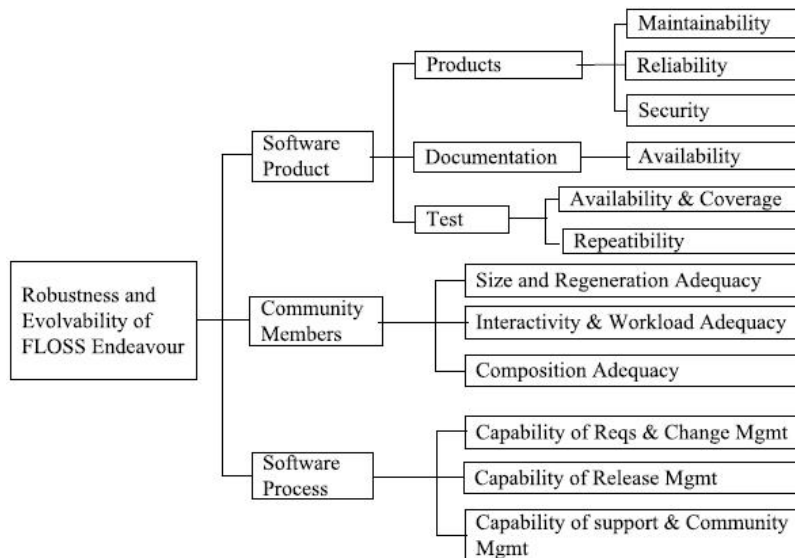


Figure 4.4. Structure of the QualOSS Standard Assessment

QualOSS uses the term “FOSS endeavour” instead of FOSS project. A FOSS endeavour is defined by the following four elements: 1) A set of work products, 2) the FOSS community creating, updating and using these work products, 3) the tools used to act on these work products or to build or run the software product, and 4) the set of development processes executed by the community. These processes include rules and a division of labour accepted and followed by community members when interacting and creating work products (Ruiz and Glott, 2009).

Figure 4.4 illustrates the structure of the *QualOSS Standard Assessment Method*, with the defined quality focus (robustness and evolvability) as the root node. The root node is decomposed into the FOSS endeavour elements (software product, community members, software process). These elements are further decomposed into sub-goals as leafs. Various metrics are associated with each of the leaf characteristics.

The QualOSS method evaluates the degree of risk for selected leaf characteristics, related to a selected context with specified viewpoints. The QualOSS Standard Assessment Method represents one specific predefined configuration, context (*Usage*=integration into a product, *Mode*=product comparison, *Collaboration*=full FOSS collaboration) with a set of viewpoints (long term management viewpoint, short term management viewpoint, long term technical viewpoint, short term technical viewpoint). The intention behind the configurations is to adjust the assessment to a specific business case. Depending on this configuration, only the most relevant metrics will be used.

Goal Question Metrics. QualOSS uses the GQM, Goal Question Metrics, invented by Basili (1992). A GQM template is associated with each of the leaf characteristics in Figure 4.4. These are “Maintainability”, “Security”, “Reliability”, “Availability”, “Availability and Coverage”, “Repeatability”, “Size and Regeneration Adequacy”, “Interactivity and Workload Adequacy”, “Composition Adequacy”, “Capability of Requirements and

Documentation & Evolvability of Endeavour AVG 1.873	Work product AVG 1.32	Product AVG 2.216	Maintainability AVG 1.596
		Documentation AVG 1.333	Reliability AVG 2.1
			Security AVG 2.682
	Community mbrs AVG 2.282	Test AVG 0.5	Availability AVG 1.333
			Test Availability and Coverage AVG 0.5
		Software processes AVG 2.017	
	Size and Regeneration Adequacy AVG 3		
	Interactivity and Workload Adequacy AVG 1.563		
		Capability of requirements & change mngt. AVG 2.333	
		Capability of release management AVG 1.7	

Legend:^a

High risk [0, 1[Medium risk [1, 2[Small risk [2, 3[Negligible risk [3, 4[
---------------------	-----------------------	----------------------	---------------------------

a. Note that we use shades of grey to visualise the risk rather than using the colours green, yellow, red, and black, as specified by QualOSS.

Table 4.2. Example of a QualOSS risk assessment tree

change management”, “Capability of Release Management”, and “Capability of Support and Community Management”.

The leaf characteristics represent assessment (sub-)goals. Based on the configuration, a set of questions is associated with each (sub-)goal. For an assessment goal on “Maintainability” from a product manager’s viewpoint, the following questions are defined in QualOSS: a) What is the percentages of enhancements proposal that get accepted? b) What is the rapidity with which accepted enhancements are implemented? c) What is the percentage of changes in the code between major releases? d) What is the percentage of changes to public interfaces in the code (external API) between major releases? e) What is the evolution in code volumetry between various releases of the code over time (in chronological order)?

Associated with each question is a set of (one or more) risk indicators. The question “What is the percentages of enhancements proposal that get accepted?” is associated with the following risk indicator: i) *green* colour indicates that 10% of the enhancement proposals are accepted; ii) *yellow* colour indicates that between 5% and 10% of the enhancement proposals are accepted; iii) *red* colour indicates that between 2% and 5% of the enhancement proposals are accepted; and iv) *black* colour indicates that less than 2% of the enhancement proposals are accepted.

Various metrics are associated with each of the risk indicators. In the example above the following two metrics are defined: 1) number of enhancement proposals; and 2) number

of accepted enhancement proposals. Additionally, both an artefact type, a data source type, and a specification of a measurement procedure are defined for each of the metrics.

QualOSS work- and information flow. The first step in a QualOSS assessment is to configure the assessment according to viewpoints, contexts, etc. This results in a predefined (sub-)set of questions, associated risk indicators, and metrics. For each leaf characteristic a GQM template is filled in during the measurements, implemented as a spreadsheet.

Measurements are performed according to the defined metrics. These are highly automated using a number of supporting tools, such as CVSanaly⁶⁰ and Bitcho⁶¹. However, a good portion of the measurements, especially on documentation, needs to be done manually. The measurement results are documented in spreadsheets that are filled in automatically or manually. The resulting scores from measurements related to each of the leaf characteristics are finally aggregated to form an overall risk indication. Assessment results in QualOSS are finally presented in a graph, as illustrated in Table 4.2.

4.8.6 Comparison of Quality Models

Studies have been conducted to compare the quality models OpenBRR and QualOSS (Glott et al., 2010; Groven et al., 2010; Haaland et al., 2010), as well as evaluating the impact of the assessor for the result in OpenBRR (Groven et al., 2014). Petrinja et al. (2010) present a comparison between OpenBRR, QSOS, and OMM assessment models.

QualOSS and OpenBRR both cover quality views on product quality, manufacturing process, and, to some smaller extent, the user view on quality. While the QualOSS assessment is a highly automated measurement and uses a number of measurement tools, OpenBRR is based solely on the skills of the evaluators. There is also a difference in the output of the two quality assessment models: while OpenBRR outputs a score, QualOSS also outputs trend indications, e.g., the evolution of the number of lines of code between releases. QualOSS has a rather large set of predefined metrics and indicators based on GQM. OpenBRR has a much smaller metrics set, containing 27 predefined metrics, additionally to the functionality-related category.

When the assessment is based on manual work, critical information can be missed. This is also the case for QualOSS, especially when no suitable tools are present. In that case, assessment can be performed on a manual basis or one can choose to assess without full coverage of topics. When the tool support is working as intended, the QualOSS is a source of more insight compared to a method like OpenBRR.

Both models are quantitative based on data measurements related to predefined metrics. The data sources, covering both the software and its community, are reachable on the Internet. Based on the actual measurements (data collection on the Internet), scores are computed according to predefined score schemes. The aim of both models is to assess the

60. See <http://cvsanaly.tigris.org/>; accessed November 23, 2010.

61. See <http://tools.libresoft.es/bitcho/>; accessed November 23, 2010.

quality and the risks associated with FOSS software used in a business context.

OpenBRR allows assessment of a limited set of quality metrics, based on manual data collection. QualOSS, in contrast, involves hundreds of quality metrics. Here, supporting software tools play a prominent role in the data collection. Both models can, to some extent, be configured towards certain business needs. OpenBRR allows to alter the weights of quality characteristics and their associated metrics and by the addition of a feature list. QualOSS allows to configure the GQM template for each of the leaf characteristics according to predefined viewpoints, modes, and usage value sets.

OpenBRR is a useful tool with small resource requirements and low time consumption. It requires general knowledge about where to find information on the Internet combined with deep domain knowledge on the part covering functionality. The QualOSS assessment is a highly automated measurement and uses several software measurement tools. In contrast to OpenBRR, expert skills on functionality are not needed. However, experts need to be present to operate the collection tools.

Unfortunately, the reported OpenBRR activities are low, and the community is inactive. This is disappointing as it seems to be potentially a useful tool with small resource requirements. Similarly, the community support for QualOSS has still not reached its full potential, and there is scope to further develop this methodology. Time will show if an active community will grow around QualOSS or be regenerated around OpenBRR, or if another quality model will appear. It is evident that there is a real need for sound quality models in the market, helping actors make their decisions.

4.9 Characteristics of FOSS

As discussed previously in this chapter, the openness of FOSS provides the user with many advantages. These include that the user can inspect the code, consider its quality, performance, security issues, fault possibilities, etc. The user can also adjust the code as needed, fix bugs, etc. However, these advantages of FOSS require an active user who has skills within computer software design and implementation. As an alternative, the user can ask a person with computer-skills for help, possibly as a paid service.

This fact may be one of the reasons that FOSS is today used by enterprises who can afford to purchase the required services, as well as by people with computer-skills. Among other groups there is a widespread sceptical attitude towards FOSS.

For many users, the commercial software is what they expect when it comes to the use of computers. This expectation ranges from functionality, via look-and-feel, to the way how malfunctions are handled, e.g., by warranties. Any change of this will confuse the inexperienced user, and thus drive her or him away from FOSS. Possible FUD⁶² campaigns from commercially working competitors contribute additionally to the reluctance to use FOSS.

62. Fear, uncertainty, and doubt (FUD) is a tactic of rhetoric and fallacy used in sales, marketing, public relations. See http://en.wikipedia.org/wiki/Fear,_uncertainty_and_doubt; accessed August 10, 2010.

In most cases, software is run for a purpose, that is the user expects a certain service, performance and functionality in a given environment. For some applications there are no FOSS replacements (yet) available. For example, an accounting system in an enterprise might be tailored to specific needs built on commercially available building blocks. Replacing such a system by a FOSS products is often not viable, since certain APIs or scripts need to be implemented. Usually, a replacement of such a system is a major undertaking.⁶³

Even though FOSS products implement similar functionalities, it is not always possible to use FOSS products. As an example we mention OpenOffice which implements an office suite in line with Microsoft Office. In fact, many features of OpenOffice re-implement Microsoft Office, and it is said that Sun Microsystems purchased StarOffice to implement an office suite that does not require licensing fees, and that the costs of the development of OpenOffice are less than the licensing fees for a similar installation.⁶⁴ However, for some documents, e.g. legal documents, it is important that these are exactly presented as the system that generated these. Even though importing and exporting functionality exist, the transformation does not always produce identical results, and information may get lost in that process.

In order to overcome some of the problems not being able to run FOSS products, the users can utilise a mixed environment, running software in some type of virtual machine or an emulator. Examples include wine, kvm, VMWare, QEMU, etc. Note that some of these are FOSS, others are commercial products. Often, administrative products in businesses are proprietary, and need to be run on virtual machines, or on external machines with graphical windows on the client machine. Nonetheless, virtual machines enable these mixed environments. Note also that some distributions of Linux offer both FOSS and commercial software, such as SuSE, RedHat, etc.

4.9.1 Interplay with proprietary systems

Proprietary systems often employ proprietary protocols or other proprietary standards, e.g., for storage of information. These standards are unknown to outsiders, and are often protected by copyright, patents, or contracts. In practice many of these protocols and formats are not available to implementors of FOSS. Note that in some cases it is even not legal to implement certain standards with FOSS, since the licensing terms do not allow this.⁶⁵

On the other hand, since a substantial part of the users uses FOSS-based systems or systems developed by another provider, software providers need to open up in order not to lose market shares. The use of a proprietary protocol where no implementations for other platforms exist, will only work as long as some kind of monopoly situation can be

63. See Rahemipour (2010); Rahemipour and Effenberger (2010) for practical recommendations how OpenOffice can be adjusted to fit into a business environment.

64. Note that Sun Microsystems was acquired by Oracle in 2009.

65. An example is the encoding of mp3 files. The licensing terms require that a fee is paid per encoder, and per encoded file. These terms cannot be fulfilled using FOSS.

maintained. As soon as users of another platform arrive, or interoperability is required, implementations on other platforms will occur. In many cases, an enterprise using the proprietary software model will license their knowledge under commercial conditions. However, for open source platforms, such licensing usually will not work, and competing implementations, often derived from some kind of reverse-engineering, will occur that are more or less interoperable. Since this could lead to frustrated users, the acceptance of a proprietary system with closed protocols could decrease. In some cases, open source communities have developed competing, better products that eventually replaced the proprietary technology.

Examples of technologies that have been developed as a reaction to proprietary technologies include (a) mono, a cross platform, open source .NET development framework⁶⁶; (b) Moonlight⁶⁷, which is an open source implementation of Silverlight; (c) OpenOffice and LibreOffice, an office suite⁶⁸ that replaces Microsoft Office; (d) The Gimp⁶⁹ as a replacement of Photoshop; and so on.

For some products, compatibility can be achieved by the use of converters that transform the input- or output-formats of proprietary systems to the respective formats of their open source counterparts. However, these are not always available, such as for Microsoft Visio⁷⁰ or for certain mindmapping software. In these cases, the end user will suffer by not being able to re-use own work, or being able to access others work.

For FOSS to work properly, the use of open standards⁷¹ that are publicly available is recommended. If these are not available, the use of other protocols that follow the definition of *open* is preferred. Note also that some standards that are open, such as some standards for multimedia technologies released by the ISO, can contain patents, which can be a problem for implementing such functionality as FOSS.

4.9.2 Hardware issues

In order to be useful, hardware needs to be supported by the operating system, system drivers, or the application software. When new hardware comes on the market, the FOSS community might not have had the opportunity to implement the drivers necessary to use the hardware. This is the case especially when the specifications of the hardware are not obtainable.⁷² Some manufacturers only release a binary version of their drivers at no cost. These can be linked into the operating system or system software using a defined interface. In this case, the software is not available as FOSS, but can be used together with FOSS-based systems. Other vendors publish drivers to their hardware as FOSS in

66. See www.mono-project.com/; accessed August 24, 2011.

67. See www.mono-project.com/Moonlight; accessed August 24, 2011.

68. See www.openoffice.org/; accessed August 24, 2011 and www.libreoffice.org; accessed August 24, 2011.

69. See www.gimp.org/; accessed August 24, 2011.

70. See en.wikipedia.org/wiki/Microsoft_Visio; accessed August 24, 2011.

71. See en.wikipedia.org/wiki/Open_standard; accessed August 25, 2011.

72. Sometimes the opposite happens. Lately, the openly available USB 3.0 specification has been implemented for Linux as the first operating system having the necessary drivers in place.

order to get better software support, and to make use of innovation in the form of better software from the community around the product.

Experience shows that it usually takes some time before hardware products are fully supported by FOSS-based products. Therefore, buyers of hardware often need to do research whether a product is compatible with the FOSS they are using. For commercial products, drivers often come with the hardware, attached on a CD-ROM or obtainable from the Internet. In some cases, e.g., for some 3G communication devices, only suboptimal implementations are available for the Linux operating system. However, for the majority of hardware, especially hardware that has been available for some time on the market, the support of FOSS is excellent, as long as there are no other obstacles, such as patents.

4.9.3 Universal design

Universal design refers to a broad spectrum of products and environments that are usable and effective for everyone.⁷³ It emerged from *barrier-free design* and *assistive technology*, and recognises the importance of how things are perceived in the minds of all users. In principle, FOSS should be ideal to produce universally designed software. However, in practice there are several obstacles to overcome, such as missing or insufficient hardware support for devices necessary to give access to special target groups, lack of interest or ignorance of community members in FOSS projects, or insufficient API design for universally designed features. Also the ignorance of most users requiring universally designed products towards FOSS might play a role, since CBPP by these users could foster a better commons, namely universally designed products that fit better their needs.

Functionality and usability are most important for all target groups using software. Implementing universally designed software requires a certain architectural design, access to APIs, and access to protocols and interfaces to use both hardware and software products. Several distributions offer functionality for universal design, as well as for internationalisation, which can be switched on if desired. However, currently the support is quite limited, and available for some larger target groups only, such as visually impaired or hearing impaired.

Often, there is only limited support for aids that are provided by the governmental organisations⁷⁴. While some technically skilled users have managed to develop the necessary interfaces for their needs, most users need to give up on using software other than the commercially supported software. In some cases, the development of FOSS is not possible due to patents or business secrets that might be part of the interfaces or protocols.

In a presentation in 2007, Klaus Knopper, the developer of the Linux distribution *Knoppix*⁷⁵ shows examples of application- and desktop helpers, OpenOffice Accessibility, and the *ORCA screenreader*; he remarks that making information *accessible* is not as easy as often advertised by software vendors taking into account the various different capabili-

73. See http://en.wikipedia.org/wiki/Universal_design; accessed August 15, 2010.

74. In Norway, NAV and the *hjelpemiddelsentralen* <http://www.nav.no/hjelpemiddelsentralene>; accessed September 24, 2010, are responsible for supporting aids for target groups.

75. See <http://www.nuug.no/aktiviteter/20071211-accessibility/>; accessed September 24, 2010.

ties and possibilities of users with and without disabilities.

4.9.4 Software as a Service.

Software as a service (SaaS) is a software delivery model in which software and its associated data are hosted centrally on servers, while the results of running this software are available on the user's terminal. The term SaaS is often connected to running services in the Internet cloud, and is a further development from the Service Oriented Architecture (SOA) which is extended from web services to applications, platforms and infrastructures (Tietz et al., 2011). Often, the layers in the Internet cloud are denoted as 1) *Infrastructure as a Service* (IaaS), 2) *Platform as a Service* (PaaS), and 3) *Software as a Service* (SaaS), with a management layer for all three of these layers.

While practically every Internet service is driven by some underlying software running on a server, the term SaaS is often used in the context of business applications⁷⁶, and for applications for personal computing, such as document processing, spread sheets, presentations, or image processing. The latter category is often combined with offers from the providers to host content. As for the first category, SaaS has become a common delivery model for most business applications, including accounting, collaboration, customer relationship management (CRM), enterprise resource planning (ERP), invoicing, human resource management (HRM), content management (CM) and service desk management.

SaaS can offer a variety of advantages, such as low costs for the users of standard services, outsourcing of infrastructure and maintenance to the provider, high scalability, rich functionality, and so on. As business models we find subscription, pay for use, freemium, or even free access, often as an advertisement-based model.

Stallman (2010b) argues that the use of SaaS is a challenge to the software freedoms proclaimed by the FSF.⁷⁷ In his opinion, the use of SaaS lets the user loose control since the data are processed on a server that is running some software under someone else's control. The threat of spyware running on the SaaS servers, e.g., for advertisement purposes, or other malicious activities, such as altering content, cannot be neglected. Therefore, the use of free software that must be identical with the software running on the SaaS server can be one step in the right direction, so that the users can check how their data are processed.

The GNU Affero General Public License (AGPL) is a modified version of the ordinary GNU GPL version 3 with one added requirement: if a programme is run on a server and users can communicate with it there, then one must be able to download the source code corresponding to the program that is running on that server.⁷⁸ Also modified version of the programme running on a server must be able to be downloaded. While the GNU Affero GPL affects developers of free programs that are often used on servers, the problem of controlling what really is going on with the customer's data on a server cannot be

76. See http://en.wikipedia.org/wiki/Software_as_a_service; accessed August 7, 2011.

77. See <http://www.gnu.org/philosophy/who-does-that-server-really-serve.html>; accessed August 7, 2011.

78. See <http://www.gnu.org/licenses/why-affero-gpl.html>; accessed August 7, 2011.

solved with licensing alone. Both the ordinary GNU GPL, version 3, and the GNU Affero GPL allow users to link together modules under these two licenses in one program.

While SaaS providers technically are running the service and its data entirely on a server, including processing and hosting of user data, SaaS must not be confused with running a service on a local computer, typically in a browser, with software provided from an external server. Often SaaS services are enriched with this kind of software in the form of JavaScript programs or Java applets which might be proprietary software. When accessing a service, these are often run without informing the user. Note that SaaS and proprietary software in the browser often are combined.

According to Stallman, SaaS and proprietary software lead to similar harmful results, but the causal mechanisms are different. While using free software in a server gives the software freedoms to the provider, it does not protect the end users from the effects of SaaS of losing control.

4.9.5 Issues with patents

Patents are temporarily limited rights to exploit a genuine idea exclusively. Rights holders can set the terms how others can use technologies covered by the patent, e.g., by paying a fee. However, in some occasions, patents can prevent FOSS from being used, as the example of the patent covering the mp3 technology shows.

According to Bruce Perens⁷⁹, *software patenting is generally hostile to FOSS, because patent holders require a royalty payment that isn't possible for developers who distribute their software at no charge. There are also many other reasons that the software patenting system is broken and actually works to discourage innovation.*

The mp3 technology covers en- and decoding sound files, such as music efficiently. The technology is patented by Fraunhofer IIS and Thomson Consumer Electronics. The terms require that a fee is paid to the patent holders for each sold version of the encoding software, as well as a fee for each encoded file. There have been attempts to implement the mp3 encoder as FOSS: *bladeenc*. However, *bladeenc* cannot be used legally in most countries.⁸⁰ As a reaction, *Ogg Vorbis* was developed as a replacement. *Ogg Vorbis* has similar specifications as mp3, but is not based on patented technology. *Ogg Vorbis* has reached a relatively good penetration in the market.⁸¹

Other obstacles for the implementation of multimedia FOSS include patents and closed media formats where reverse engineering is prohibited. Sometimes altered Win32-libraries are used, but also this can cause licensing problems. The use of media formats is, however, more an issue of open standards, which we treat in Chapter 8.

Perens points out⁸² that *proprietary file formats and intercommunication protocols are used by a software manufacturer to lock out the products of other manufacturers and*

79. See <http://perens.com/policy/open-source/>; accessed August 28, 2011.

80. See <http://www2.arnes.si/~mmilut/>; accessed September 24, 2010.

81. *Ogg Vorbis* is used extensively in games.

82. See <http://perens.com/policy/open-source/>; accessed August 28, 2011.

open source. Perens believes that business and government should insist on publicly documented file formats and intercommunication protocols that require no royalty or discriminatory licensing. There is sufficient space for a business to differentiate their product in all of the other parts of the program that are not concerned with the technical implementation of file formats and intercommunication.

The GNU General Public License version 3 (GPLv3)⁸³ addresses patent issues explicitly in order to counter the threats to the software freedoms from a more and more pervasive enforcement of patent rights. In the GPLv3, the licensor must give the permission to use all patents under the ownership or control of the licensor. As a consequence the GPLv3-covered software can be used without worrying that a desperate contributor will try to sue them for patent infringements later. Note that if a licensee tries to use a patent suit to stop another user from exercising those rights, the license will be terminated.

4.9.6 Digital Rights Management

Digital Rights Management (DRM) protects content from unauthorised access (Abie, 2007). However, DRM is a technology that potentially imposes restrictions on software freedom and on access to other copyrighted work. According to the FSF, the DRM technology, which they name *Digital Restrictions Management*⁸⁴, is a threat to the software freedoms. In the GNU General Public License version 3 (GPLv3)⁸⁵ it is stated that compatibility to the GPLv3 is only achieved when *No covered work constitutes part of an effective technological protection measure*. While this sounds like a general prohibition to implement DRM systems, the licenses FAQ⁸⁶ explains that releasing code to develop any kind of DRM technology is allowed and will not count as an effective technological protection measure. This implies that the DMCA (Digital Millennium Copyright Act), the European Union Copyright Directive, and similar laws cannot be applied if someone breaks⁸⁷ a method implemented under the GPLv3. Effectively, the DRM clause is designed to avoid restrictions of software imposed by these laws.

4.9.7 Security Issues

For over a decade there has been a dispute whether FOSS is more secure than commercial alternative. Hansen et al. (2002) claim that *open and co-operative software development can lead to robust and reliable products, but that adequate diligence during the entire development process and during the evaluation by experts* is needed. Here, by security we mean the absence of vulnerabilities that could be exploited so that damage, cost, or unavailable services could occur. Using this definition, security is closely tied to software quality issues which are discussed in Section 4.8.

83. See www.gnu.org/licenses/quick-guide-gplv3.html; accessed August 25, 2011.

84. See www.defectivebysdesign.org; accessed August 25, 2011.

85. See www.gnu.org/licenses/quick-guide-gplv3.html; accessed August 25, 2011.

86. See www.gnu.org/licenses/gpl-faq.html; accessed August 25, 2011.

87. In the past, there have been examples where (rather poorly designed) technical protection measures have been reverse-engineered and made available to others, such as the Content Scrambling System (CSS) for DVD content; see en.wikipedia.org/wiki/Content_Scramble_System; accessed August 25, 2011.

Wong (2002) identifies the reason for 90% of security vulnerabilities with buffer overflows, format string vulnerabilities, authentication, authorisation, and cryptography weaknesses. A report from the SANS Institute by Phillips (2003) lists buffer overflows, format string vulnerabilities, heap overflows, and issues with programming languages. All of these are in most cases caused by bad software quality. The question is whether FOSS or proprietary software is the better model to create better software. Phillips concludes that both sides have legitimate arguments for why their programming model is better, although the open source world has more compelling arguments.

The closed source developers build much of the security on the so-called “security through obscurity”, which means that possible attackers cannot know how a system is built and therefore need more resources. According to open-source proponents this argument is void, while closed-source proponents assume that attackers have an easy job find weaknesses in FOSS due to its openness. However, following the daily press about vulnerabilities, most often proprietary systems show vulnerabilities; only to some extent this can be explained by a larger market share.

In a recent study, Schryen (2011) looks at the question *Is Open Source Security a Myth?* He uses an empirical analysis by comparing 17 selected, widely used open-source and closed-source applications regarding vulnerabilities. The author retrieves the data from the MITRE database⁸⁸ on common vulnerability and exposures, and the National Vulnerability Database⁸⁹. He looks into several metrics, such as mean time between vulnerability disclosures, development of vulnerability disclosure over time and their severity, unpatched vulnerabilities and their severity. While a first analysis suggests that open source software is more secure than their closed source counterparts, a further statistical analysis shows that the differences are statistically not significant. Other properties, such as the patching behaviour, are dependent on the software vendor’s policy rather than the programming style.

Looking into reasons why open source software should be more secure, we find the quote by Linus Thorvalds: *Given enough eyeballs, all bugs are shallow*. Warfield (2003) suggests, that the ever-ongoing code-review will promote more secure coding techniques, also since the programmers in FOSS seek reputation in their community. He also argues why myths of lacking source control in FOSS, no one really looks at the source, and anyone could manipulate FOSS to the worse do not hold. Obasanjo (2002) argues that secure software is independent of programming model; instead, certain practices such as (a) formal methods; (b) code audits; (c) testing; (d) design reviews; and (e) codified best practices. While many FOSS communities use these practices, also proprietary developers follow these. Since this is independent of programming model, the benefit of FOSS is when making decisions whether a candidate software to be installed is secure due to its openness.⁹⁰

88. See cve.mitre.org/cve/; accessed November 25, 2011.

89. See nvd.nist.gov; accessed November 25, 2011.

90. Following this argument, the possibility to view the source code would be enough. Microsoft implemented such a mechanism by “Shared source” for its software, where software can be disclosed to business

4.10 Case Study: The Role of FOSS for the Smartphone Market

The smartphone and tablet market can be used as an example for the use of FOSS by diverse stakeholders that have a role in the value chain. A modern smartphone or tablet PC consists of hardware, the operating system, system software such as the graphical user interface, basic system apps, and third-party apps that can be downloaded from an “app store”. This universe is organised in different ways for the different systems. Let’s study the effect of FOSS licensing and other agreements in the creation of smartphones and tablets.

There is a variety of stakeholders in the value chain for smartphones. In this study, we do not look into the communication part of smartphones, i.e., telecommunication providers or operators are not considered. Of the remaining stakeholders, we identify the hardware producers, the producers of system software, app producers, and content providers.

All of the single parts in the value chain can be measured both in costs and revenue. These single parts can be identified as: (a) the hardware; (b) extra system apps to show specific capabilities of the hardware; (c) the graphical user interface (GUI); (d) the basic system apps, such as web browser, viewers, camera app, email, and map viewer; (e) the operating system; (f) system software to support the operating system; (g) the app store; (h) third party apps; and (i) content.

In the following, we shall take a look into some of the most relevant operating systems for smartphones and how the different stakeholders use licenses and agreements in order to win influence on the market. As candidates for our discussion we choose phone and tablet operating systems that have a reasonable share in the market today or have a specific role; i.e., we do not mention yet another phone operating system with the same characteristics as one of the below mentioned. An overview and comparison of phone operating system can be found elsewhere⁹¹. Note that except for iOS and Microsoft the kernel of the respective operating system is built on Linux which is licensed under the GPLv2.

We take a closer look at:

- 1) iOS by Apple is built on software that originally was licensed under the BSD license, but chose to make their changes to the software proprietary, so that the iOS operating system and related system software is considered as a proprietary system.
- 2) Android by Google is built on FOSS. While the kernel consists of Linux (GPL license), the rest of the Android system is either licensed under an Apache license or proprietary. Google uses the Android trademark and membership in the Open Handset Alliance (OHA) to avoid that hardware producers other actors create competing products based on the open parts of Android. However, there are forks of the open source

partners. See http://en.wikipedia.org/wiki/Shared_source; accessed August 25, 2011. Note that most of the shared source licenses are not considered free by the FSF; only two of these licenses are considered open by the OSI, as also outlined in Section 4.3.

91. See http://en.wikipedia.org/wiki/Comparison_of_mobile_operating_systems; accessed July 11, 2014.

parts of Android, such as the Replicant and the Fire OS which are presented in the following.

- 3) Replicant, supported by the FSF, is the attempt to create a free version of Android where all the proprietary parts are replaced by FOSS. Replicant is supposed to run on the same devices that are running Android, thus hardware producers are not in a position that could be sanctioned by Google. Replicant does not have a commercial profile.
- 4) Fire OS by Amazon is build on Android, but are not part of the OHA, and thus, need their own store and need to implement the proprietary parts of Android using other alternatives. Amazon is mostly interested in the market for content.
- 5) Windows Phone by Microsoft is typical for a proprietary phone operating system. The hardware is typically produced by a Microsoft-owned company (Nokia) and the software is also available to be licensed to others (HTC, Samsung, etc.).
- 6) Firefox OS is built around a mobile version of the Firefox browser which is licensed with the Mozilla Public License. The apps are supposed to be run in the browser using HTML5. The development of Firefox OS has a community-based approach using open standards with no proprietary software or technology involved.
- 7) Sailfish by Jolla is a further development of an abandoned phone OS by Nokia. The goal is to provide a FOSS based mobile operating system that also integrates with the free software of Android (app-compatibility) and Firefox OS.
- 8) Ubuntu Touch by Canonical is the attempt to port Ubuntu to mobile phones and tablets. Ubuntu Touch has a community-based approach.

Besides the owner of the respective OS there are other stakeholders that want a revenue, namely hardware producers, content producers, and software producers.

For hardware producers who brand the devices, the revenue comes from the number of sold devices, software via an appstore, and content. This revenue must meet the costs for development, production, and system software. Thus, for the hardware producers the business model is in selling devices. Items such as the GUI, the basic system apps, the operating system, and the system software can be considered as a source of development costs. To optimise the revenue the stakeholders need to try to control the sale of hardware, software, and content.

4.10.1 Licensing Mechanisms and their Consequences for iOS

iOS by Apple⁹² is built on software that originally was licensed under the BSD license,⁹³ but chose to make their changes to the software proprietary, so that the iOS operating system and related system software is considered as a proprietary system.

92. See <http://en.wikipedia.org/wiki/Ios>; accessed July 12, 2014.

93. There are some parts implemented using other licenses, such as KHTML which is under the LGPLv2; see <https://www.webkit.org/>; accessed August 6, 2014.

According to Richard Stallman the iOS is unfree software, and especially what he calls the “i-things” are, to his opinion, *universal malware* with built-in spyware and the tightest handcuffs in a general-purpose computer (Gupta, 2012).

There is also a dispute about whether GPL software can be distributed by Apple’s *app store* since there is a conflict between the GPL and Apple’s terms of services. As a consequence, Apple chose to no longer distribute GPL software from their app store rather than changing their terms of services (Vaughan-Nichols, 2011).

According to Smith (2010) Section 6 of GPLv2 says: *Each time you redistribute the Program (or any work based on the Program), the recipient automatically receives a license from the original licensor to copy, distribute or modify the Program subject to these terms and conditions. You may not impose any further restrictions on the recipients’ exercise of the rights granted herein.* However, when the App Store terms prohibit commercial use, general distribution, and modification, these are exactly the kinds of “further restrictions” that are not allowed thanks to the last sentence here. Section 9(c) of the App Store Terms of Service says that *The Usage Rules shall govern your rights with respect to the Products, in addition to any other terms or rules that may have been established between you and another party.* Thus, Apple’s Terms of Service impose restrictive limits on use and distribution for any software distributed through the App Store, and the GPL doesn’t allow that.

This dispute started with software VLC which is under the GPLv2. Already when planning to put VLC on the app store there were obstacles since the organisation behind VLC, VideoLAN, is a non profit organisation and, therefore, cannot be registered with a developer account⁹⁴. Subsequently, the company Applidium used their account to publish VLC with the permission of VideoLAN.

Some of the developers of VLC were of the opinion that to pursue a compliance case would harm their interests, particularly due to the consequence that the software they are co-developers of was no longer available for iOS. The VLC app is now available again in the app store, now under a dual license⁹⁵ with both the GPL and the MPL. Some developers suggested to use the LGPL instead of the GPL; however, the LGPL will legally have the same consequences as the GPL.

4.10.2 Licensing Mechanisms and their Consequences for Android and Related

Android⁹⁶ is mobile OS developed by Google on the basis of FOSS. While the kernel consists of Linux (GPL license), the rest of the Android system is either licensed under an Apache license or proprietary. Google uses the Android trademark and membership in the Open Handset Alliance (OHA)⁹⁷ to avoid that hardware producers other actors create competing products based on the open parts of Android.

94. See http://en.wikipedia.org/wiki/iOS_app_approvals; accessed July 12, 2014.

95. See <http://beta.slashdot.org/story/189029>; accessed July 12, 2014.

96. See [http://en.wikipedia.org/wiki/Android_\(operating_system\)](http://en.wikipedia.org/wiki/Android_(operating_system)); accessed July 12, 2014.

97. See openhandsalliance.com; accessed July 4, 2014.

However, Google's specific business model is interested in collecting data and the use of Google's services. Therefore, Google is interested that the basic system apps defined by Google are used by most users. Therefore, they discourage hardware producers to put their own choice for these basic system apps into the initial selection of apps. This is done by binding the hardware producers to a membership in the OHA.

Hardware manufacturer's devices need to receive a license from Google that allows them to install Android on their devices. This gives them the right to install specific versions of the Google's apps. In order for a specific device to get a license, it must pass the Android Compatibility Test Suite and meet the Android Compatibility Definition. Theoretically, this mechanism could be used to keep competitors off the market as the Skyhook Wireless vs. Google lawsuit suggests⁹⁸.

Competitors of Google can use the Android software since both the Android system core (Linux, GPL) as well as most of the system software (most of it is released under the Apache License version 2.0) are FOSS. However, since the basic system apps are under Google's proprietary license, the hardware producer need to develop their own set of basic system apps, which creates development costs for the software. Note that the license does not grant rights to the *Android* trademark. Thus, device producers need to license it from Google under individual contracts. Additionally, Google does not allow hardware producers in the OHA to produce hardware for competing Android products, i.e., Android forks.

The main source for software for Android is the Google Play store; some hardware producers and content providers have their own software repositories additionally.⁹⁹ However, Google restricts some software repositories from being available on the Google Play store, such as F-Droid or the Amazon Appstore for Android. Yet, a user can sideload the necessary client software.

With the goal of supporting a free mobile OS, the FSF supports the development of *Replicant*, an Android-based mobile platform.¹⁰⁰ The Replicant project aims to replace all proprietary components with their free software counterparts. The developers also claim to have security focus and intend to close Android backdoors.

Richard Stallman and the FSF have been critical of Android and have recommended the usage of alternatives such as Replicant, because drivers and firmware vital for the proper functioning of Android devices are usually proprietary, and because Google Play can forcibly install or deinstall apps and invites non-free software (Stallman, 2010a).

F-Droid is a software repository¹⁰¹ with FOSS for Android, Replicant, and other Android-based systems.¹⁰² F-Droid functions similarly to the Google Play store, but only contains

98. See www.theverge.com/2011/05/12/google-android-skyhook-lawsuit-motorola-samsung; accessed August 18, 2014.

99. See http://www.dmoz.org/Computers/Software/Operating_Systems/Android/Markets; accessed July 12, 2014.

100. See [http://en.wikipedia.org/wiki/Replicant_\(operating_system\)](http://en.wikipedia.org/wiki/Replicant_(operating_system)); accessed July 12, 2014.

101. <http://en.wikipedia.org/wiki/F-Droid>; accessed July 12, 2014.

102. See http://en.wikipedia.org/wiki/List_of_free_and_open_source_Android_applications; ac-

free and open-source software. Note that the F-Droid client app is not available in the Google Play store, but needs to be installed by sideloading¹⁰³ F-Droid does not require users to register and flags applications that contain features such as advertising, user tracking, or dependence on non-free software. Since the F-Droid server is free software (GPLv3), anybody can set up their own software repository.

Fire OS is a fork of Android by Amazon for their Fire phones, Fire tablets and other content delivery devices for content distributed by Amazon.¹⁰⁴ Fire OS primarily centres around content consumption from Amazon's services with a customised interface. The hardware is produced by producers who are not members of the OHA. Fire OS contains proprietary software that implement the non-free parts of Android. It also contains an "app store" for installing apps, but developers must submit these separately than from Google Play.

4.10.3 Licensing Mechanisms and their Consequences for Sailfish OS

The Sailfish OS by Jolla¹⁰⁵ is based on the Linux kernel and Mer¹⁰⁶. Mer is an open source fork of the Meego middleware for mobile phones¹⁰⁷; Mer also works together with the TI-ZEN project¹⁰⁸, another FOSS based mobile OS. It is said that the Sailfish OS also includes a proprietary parts, e.g., the multi-tasking user interface programmed by Jolla. More on the architecture of the Sailfish OS can be found elsewhere¹⁰⁹. Note also that many of the employees at Jolla are former Nokia employees involved in the development of MeeGo.

Another characteristics of the Sailfish OS is that Android apps and Firefox OS apps can be run on the platform through a "third party solution"¹¹⁰.

4.10.4 Licensing Mechanisms and their Consequences for Firefox OS

Firefox OS (project name: Boot to Gecko, B2G)¹¹¹ is a Linux-based open-source operating system for smartphones, tablet computers, and smart TVs, developed by Mozilla. Firefox OS is designed to provide a community-based alternative system for mobile devices, using open standards and approaches such as HTML5 applications, JavaScript, a robust privilege model, open web APIs to communicate directly with cellphone hardware, and application marketplace.

cessed July 12, 2014.

103. See <http://en.wikipedia.org/wiki/Sideloaded>; accessed July 12, 2014.

104. See http://en.wikipedia.org/wiki/Fire_OS; accessed July 12, 2014.

105. See http://en.wikipedia.org/wiki/Sailfish_OS; accessed July 14, 2014.

106. See [http://en.wikipedia.org/wiki/Mer_\(software_distribution\)](http://en.wikipedia.org/wiki/Mer_(software_distribution)) July 14, 2014.

107. See <http://merproject.org/>; accessed July 14, 2014. Note that both Sailfish and Mer mention that they are using an open source license, but they state not which. In the FAQ it is stated *Mer itself does not impose any particular license to the packages it is composed of. The packages use various FOSS licenses such as GPL, LGPL, BSD, and MIT.* Thus, Mer has the characteristics of a software distribution tailored for mobile phone middleware.

108. See <https://www.tizen.org/>; accessed July 14, 2014.

109. See <https://sailfishos.org/about-architecture.html>; accessed July 14, 2014.

110. See <https://sailfishos.org/about-technology.html>; accessed July 14, 2014.

111. See http://en.wikipedia.org/wiki/Firefox_OS; accessed July 12, 2014 and https://developer.mozilla.org/en-US/Firefox_OS; accessed July 12, 2014.

The development of Firefox OS has a community based approach using open standards with no proprietary software or technology involved (Goodwin, 2012). Firefox OS consists of software that is licensed with the GPLv2 (Linux, HAL), and the MPL (Gecko, XULRunner, Gaia).

The distribution of software for Firefox OS is through the Firefox Marketplace¹¹². As an extra feature, Firefox OS apps can be installed on Android from the Firefox Marketplace using the Android version of Firefox via sideloading.

4.10.5 Licensing Mechanisms and their Consequences for Ubuntu Touch

Ubuntu Touch is a mobile version of the Ubuntu operating system developed by Canonical and the Ubuntu Community. It is designed primarily for touchscreen mobile devices.¹¹³ Most of the basic software is based on native-level code that avoids Java due to efficiency reasons; thus, Ubuntu Touch can be used on entry-level devices. The licensing situation is similar to licensing of Ubuntu for PCs: most of the Ubuntu software is FOSS, but there is also proprietary software involved that can be used without royalties.

An interesting development is the *Ubuntu for Android*¹¹⁴ where the goal is to run Ubuntu applications on the phone alongside with Android, sharing a common Linux kernel. This is possible since Linux is licensed with the GPL. However, while the development of the project seems to be finished the status of this project is unclear, probably due to missing funding.¹¹⁵

4.10.6 Licensing Mechanisms and their Consequences for Windows Phone

Windows Phone by Microsoft is following the proprietary licensing model, as for the other varieties of the Windows operating system.¹¹⁶ The licensing situation for Windows Mobile is similar to licensing for PCs. Software that is outside the vital parts of the OS is left to third party producers who can use the license they choose.

Richard Stallman claims that also on mobile devices Windows is malware due to the proprietary licensing, which gives Microsoft the possibility via back-doors to remotely forcibly install changes without asking the permission (Gupta, 2012).

4.10.7 Comparison

From the above we see that FOSS and the FOSS licensing indeed have an impact on the development of the mobile phone market. We see that the majority of systems either are proprietary, such as Windows Mobile and iOS, or based on a Linux kernel and a middleware on top of it. We observe that some players use some kind of cross-compatibility on the systems based on a Linux kernel, even though this might not have been intended by the creators of these operating systems.

112. See marketplace.firefox.com; accessed July 14, 2014.

113. See http://en.wikipedia.org/wiki/Ubuntu_Touch; accessed July 14, 2014 and <http://www.ubuntu.com/phone>; accessed July 14, 2014.

114. See <http://www.ubuntu.com/phone/ubuntu-for-android>; accessed July 14, 2014.

115. See http://en.wikipedia.org/wiki/Ubuntu_for_Android; accessed July 14, 2014.

116. See http://en.wikipedia.org/wiki/Windows_mobile; accessed July 14, 2014.

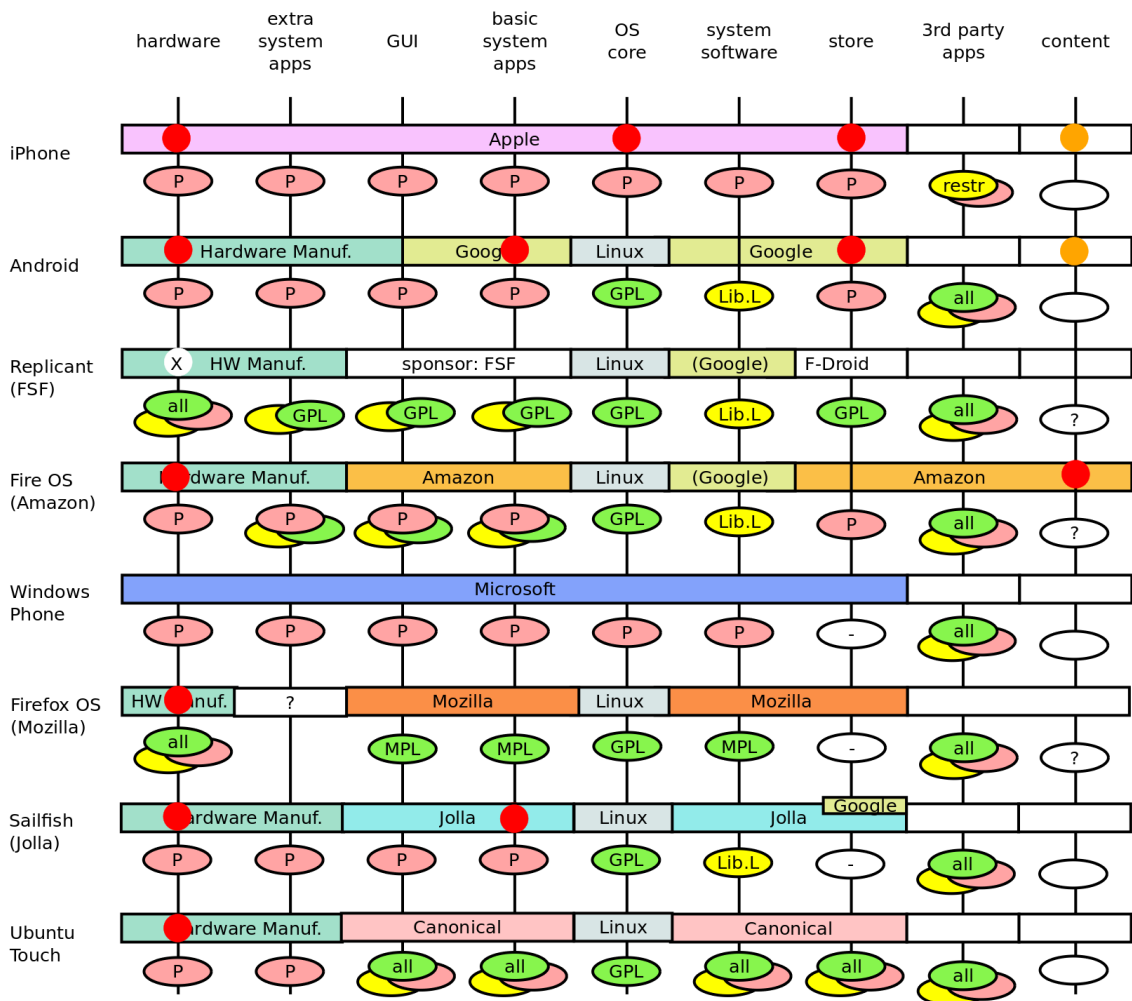


Figure 4.5. Visualisation of FOSS and the smartphone market

The runtime systems and middleware of the mobile operating systems based on Linux can have a variety of combinations of licenses, both open and proprietary. The owners of the different brands use rights on the software, open software licenses, and trademarks actively to pursue their interests, that is both commercial and ideal goals.

We also observe that organisations such as the FSF and Mozilla support or develop systems that replace proprietary parts of the most used mobile operating systems with FOSS alternatives.

Figure 4.5 shows the licensing situation of the discussed mobile operating systems for the respective parts of the operating system environment. A comparison of mobile operating systems can be found on Wikipedia¹¹⁷.

References

- Habtamu Abie. *Frontiers of DRM knowledge and technology*. *IJCSNS*, 7(1):216–231, 2007.
- acronym SA. *Open source software vs. commercial software: Migration from windows to linux – an IT professional’s testimonial*. article on the Internet, unknown year. URL members.apex-internet.com/sa/windowslinux. author uses acronym SA.
- Chris Anderson. *FREE: The future of radical price*. Random House, 2009. ISBN 9781905211470.
- Victor R. Basili. *Software modeling and measurement: the goal/question/metric paradigm*. Technical Report UMIACS TR-92-96, University of Maryland at College Park, College Park, MD, USA, 1992.
- Brian Behlendorf. *Open source as a business strategy*. In Chris DiBona, Sam Ockman, and Mark Stone, editors, *Open Sources – Voices from the Open Source Revolution*. O’Reilly, 1999.
- Yochai Benkler. *Coase’s Penguin, or, Linux and The Nature of the Firm*. *Yale Law Journal*, 112:369–446, 2002.
- B. W. Boehm, J. R. Brown, and M. Lipow. *Quantitative evaluation of software quality*. In *Proceedings of the 2nd international conference on Software engineering, ICSE ’76*, pages 592–605, Los Alamitos, CA, USA, 1976. IEEE Computer Society Press. URL <http://portal.acm.org/citation.cfm?id=800253.807736>.
- Barry W. Boehm, J. R. Brown, H. Kaspar, M. Lipow, G. J. MacLeod, and M. J. Merritt. *Characteristics of Software Quality*. North-Holland, Amsterdam, 1978.
- Douglas Coupland. *Microserfs*. Harper Perennial, June 1996. ISBN 0060987049.

117. See http://en.wikipedia.org/wiki/Comparison_of_mobile_operating_systems; accessed July 14, 2014

- Philip B. Crosby. *Quality is free : the art of making quality certain*. McGraw-Hill, New York, 1979.
- W. Edwards Deming. *Out of the crisis: quality, productivity and competitive position*. Cambridge University Press, 1988.
- Jean-Christophe Deprez, Kirsten Haaland, and Flora Kamseu. QualOSS methodology & QualOSS assessment methods. Deliverable D4.1 to the European Commission, QualOSS project, 2008. URL http://www.qualoss.org/about/Progress/deliverables/WP4_Deliverable4.1_submitted.pdf.
- Chris DiBona, Sam Ockman, Mark Stone, Brian Behlendorf, Scott Bradner, Jim Hamerly, Kirk McKusick, Tim O'Reilly, Tom Paquin, Bruce Perens, Eric Raymond, Richard Stallman, Michael Tiemann, Linus Torvalds, Paul Vixie, Larry Wall, and Bob Young. *Open Sources: Voices from the Open Source Revolution*. O'Reilly Media, 1st edition, 1999. ISBN 1565925823.
- Frans-Willem Duijnhouwer and Chris Widdows. Open source maturity model. *Capgemini Expert Letter*, 2003. URL http://pascal.case.unibz.it/retrieve/1097/GB_Expert_Letter_Open_Source_Maturity_Model_1.5.31.pdf.
- Jennifer Edstrom and Marlin Eller. *Barbarians Led by Bill Gates: Microsoft From The Inside: How The World's Richest Corporation Wields Its Power*. Holt Paperbacks, reprint edition, June 1999. ISBN 0805057552.
- Joseph Feller and Brian Fitzgerald. A framework analysis of the open source software development paradigm. In *Proceedings of the 21st Annual International Conference on Information Systems (ICIS 2000)*, pages 58–69, Brisbane, Australia, 2000.
- David Garvin. What does product quality really mean? *Sloan Management Review*, 26: 25–45, 1984.
- Bill Gates. *Business at the Speed of Thought: Using a Digital Nervous System*. Penguin, February 2001. ISBN 0582343003.
- Bill Gates and Collins Hemingway. *Business at the Speed of Thought: Succeeding in the Digital Economy*. Penguin Books Ltd, May 2000. ISBN 0140283129.
- William H. Gates, Nathan Myhrvold, and Peter Rinearson. *Bill Gates*. Viking, 1995.
- Eleftherios Gkioulekas. *Developing software with GNU*. <http://www.amath.washington.edu/~lf/tutorials/autoconf/toolsmanual.dvi>, 1999. Note: several versions available on the Internet, e.g., <http://www.mars-attacks.org/~boklm/divers/doc/toolsmanual.pdf>.
- Ruediger Glott, Arne-Kristian Groven, Kirsten Haaland, and Anna Tannenberg. Quality models for free/libre open source software — towards the silver bullet? *Software Engineering and Advanced Applications, Euromicro Conference*, 0:439–446, 2010.

- GNU. Various Licenses and Comments about Them. *Web pages*, <http://www.gnu.org/philosophy/license-list.html>, 2002.
- Bernard Golden. *Succeeding with Open Source*. Addison-Wesley Professional, 1st edition, August 2004. ISBN 0321268539.
- Richard Goodwin. Mozilla's boot 2 gecko and why it could change the world; interview with brendan eich and andreas gal. Know Your Mobile, March 2 2012. URL <http://www.knowyourmobile.com/products/16409/mozillas-boot-2-gecko-and-why-it-could-change-world>.
- Arne-Kristian Groven, Kirsten Haaland, Ruediger Glott, and Anna Tannenbergh. Security measurements within the framework of quality assessment models for free/libre open source software. In *Proceedings of the Fourth European Conference on Software Architecture: Companion Volume, ECSA '10*, pages 229–235, New York, NY, USA, 2010. ACM. ISBN 978-1-4503-0179-4.
- Arne-Kristian Groven, Kirsten Haaland, Rüdiger Glott, Anna Tannenbergh, and Xavier Darbousset-Chong. *Quality Assessment of FOSS*, chapter chapter 5, pages 99–117. Number DART/05/2014 in NR Note. Norsk Regnesentral, 2014. The research has been published as part of an earlier version of the Compendium for the course INF5780.
- Diksha P. Gupta. An Interview with Richard Stallman on Freedom, Android, Amazon, Facebook, Steve Jobs. Open Source For U, March 19 2012. URL <http://www.opensourceforu.com/2012/03/rms-interview-richard-stallman-freedom-android-amazon-facebook-steve-jobs/>.
- Kirsten Haaland, Arne-Kristian Groven, Kirsten Haaland, Ruediger Glott, and Anna Tannenbergh. Free/Libre Open Source Quality Models — a comparison between two approaches. *4th FLOS International Workshop on Free/Libre/Open Source Software*, July 1-2 2010.
- Ibrahim Haddad. Open-source compliance. *Linux J.*, 2009(185):5, 2009. ISSN 1075-3583.
- Marit Hansen, Kristian Köhntopp, and Andreas Pfitzmann. The open source approach opportunities and limitations with respect to security and privacy. *Computers & Security*, 21(5):461–471, 2002.
- Jordan Hubbard. *FreeBSD Handbook*, chapter A Brief History of FreeBSD. The FreeBSD Documentation Project, 1995-2010. URL <http://www.freebsd.org/doc/handbook/history.html>.
- Lawrence P. Huggins. Total quality management and the contributions of A.V. Feigenbaum. *Journal of Management History*, 4(1):60–67, 1998.
- International Standards Organisation. Quality management systems – requirements. Technical Report ISO/IEC 9001:2000, ISO, 2000.

- International Standards Organisation. Software engineering – product quality, part 1: Quality model. Technical Report ISO/IEC 9126-1:2001, ISO, 2001.
- InWEnt. ict@innovation: Free your it-business in africa! advanced training material on african free and open source software (FOSS) business models for IT-SMEs. Technical report, ict@innovation, July, 6 2010.
- InWEnt. Business models in free and open source software in developing countries. web publication, 2011. URL http://www.it-inwent.org/e2484/e3407/index_eng.html.
- Ho-Won Jung, Seung-Gweon Kim, and Chang-Shin Chung. Measuring software product quality: A survey of iso/iec 9126. *IEEE Software*, 21(5):88–92, 2004. ISSN 0740-7459.
- Barbara Kitchenham and Shari Lawrence Pfleeger. Software quality: The elusive target. *IEEE Softw.*, 13:12–21, January 1996. ISSN 0740-7459.
- Odd Kleiva. Åpen programvare : vanhjemmel og økonomiske sanksjoner. Master’s thesis, Universitetet i Oslo, Det juridiske fakultet, 2008.
- Donald E. Knuth. *The TeXbook*. Addison-Wesley Professional, spi edition, January 1984. ISBN 0201134489.
- Donald E. Knuth. *The METAFONTbook*. Addison-Wesley, January 1986. ISBN 0201134446.
- Han van Loon. *Process Assessment and ISO/IEC 15504: A Reference Book*. Springer-Verlag New York, Inc., Secaucus, NJ, USA, 2007. ISBN 0387300481.
- Jim A. McCall, Paul K. Richards, and Gene F. Walters. Factors in Software Quality. Volume I, II, and III. Technical Report NTIS AD-A049-014, AD-A049-015, AD-A049-055, Nat’l Tech.Information Service, November 1977.
- Heather Meeker. Dual-licensing open source business models – mixing proprietary terms with the gpl. *SYS-CON Media*, April 6 2005. URL <http://linux.sys-con.com/node/49061/>.
- Martin Michlmayr. *Quality Improvement in Volunteer Free and Open Source Software Projects: Exploring the Impact of Release Management*. PhD thesis, University of Cambridge, 2007. URL <http://www.cyrius.com/publications/michlmayr-phd.pdf>.
- Martin Michlmayr. Community management in open source projects. *The European Journal for the Informatics Professional*, X(3):22–26, June 2009.
- Martin Michlmayr, Francis Hunt, and David Probert. Release management in free software projects: Practices and problems. In Joseph Feller, Brian Fitzgerald, Walt Scacchi, and Alberto Silitti, editors, *Open Source Development, Adoption and Innovation*, pages 295–300. International Federation for Information Processing, Springer, 2007.
- Rich Morin, editor. *Prime Time Freeware for UNIX, Issue 2-2*. Prime Time Freeware, Sunnysvale, CA, July 1993.

- Dare Obasanjo. The myth of open source security revisited v2.0. developer.com, March 13 2002. URL www.developer.com/open/article.php/990711/.
- Alexander Osterwalder. *The Business Model Ontology – a proposition in a design science approach*. PhD thesis, l’Ecole des HEC de l’Université de Lausanne, 2004. URL <http://www.hec.unil.ch/aosterwa/PhD/>.
- Mark C. Paulk, Bill Curtis, Mary Beth Chrissis, and Charles V. Weber. Capability maturity model, version 1.1. *IEEE Software*, 10:18–27, 1993. ISSN 0740-7459.
- J. Peek, T. O’Reilly, and M. Loukides, editors. *Unix Power Tools*. O’Reilly, Bantam Books, March 1993.
- Bruce Perens. The open source definition. In Chris DiBona, Sam Ockman, and Mark Stone, editors, *Open Sources: Voices from the Open Source Revolution*. O’Reilly and Associates, Cambridge, Massachusetts, 1999.
- Bruce Perens and Debian. Debian Social Contract. *Web pages*, http://www.debian.org/social_contract, 1997.
- Randy Perry and Al Gillen. Demonstrating business value: Selling to your C-level executives. White paper, IDC, April 2007. Sponsored by Microsoft.
- Etiel Petrinja, Alberto Sillitti, and Giancarlo Succi. Comparing openbrr, qsos, and omm assessment models. In Pär Ägerfalk, Cornelia Boldyreff, Jesús González-Barahona, Gregory Madey, and John Noll, editors, *Open Source Software: New Horizons*, volume 319 of *IFIP Advances in Information and Communication Technology*, pages 224–238. Springer Boston, 2010.
- Rishona Phillips. The bugs are biting. InfoSec reading room, whitepaper, SANS Institute, August 8 2003. URL www.sans.org/reading_room/whitepapers/basics/bugs-biting_1135.
- Qualipso. CMM-like model for OSS. Course material, 2009. URL <http://www.qualipso.org/node/175>.
- Jacqueline Rahemipour. Datenverkehrsordnung – OpenOffice.org-Tutorial III: Datenaustausch-Strategien für den Unternehmenseinsatz. *iX*, 5/2010:102–108, may 2010. in German.
- Jacqueline Rahemipour and Florian Effenberger. Office nach Maß – OpenOffice.org-Tutorial II: Firmenrichtlinien umsetzen. *iX*, 5/2010:102–108, may 2010. in German.
- Eric S. Raymond, editor. *The New Hacker’s Dictionary - 3rd Edition*. The MIT Press, 3 edition, October 1996. ISBN 0262680920.
- Eric S. Raymond. The Halloween Documents. web pages, 1998. URL www.catb.org/~esr/halloween/.

- Eric S. Raymond. *The Cathedral & the Bazaar: Musings on Linux and Open Source by an Accidental Revolutionary*. O'Reilly Media, first edition, 1999. ISBN 1-56592-724-9.
- Colin Robson. *Real world research: a resource for social scientists and practitioner-researchers*. Blackwell Publisher Ltd., 2002.
- José Ruiz and Rüdiger Glott. Result of case studies. Deliverable D5.3 to the European Commission, QualOSS project, 2009. URL <http://www.qualoss.org/deliverables/qualoss%20test2.rtf>.
- Ioannis Samoladas, Georgios Gousios, Diomidis Spinellis, and Ioannis Stamelos. The SQO-OSS quality model: Measurement based open source software evaluation. In Ernesto Damiani and Giancarlo Succi, editors, *Open Source Development, Communities and Quality — OSS 2008: 4th International Conference on Open Source Systems*, pages 237–248, Boston, September 2008. IFIP 20th World Computer Congress, Working Group 2.3 on Open Source Software, Springer. URL <http://www.dmst.aueb.gr/dds/pubs/conf/2008-OSS-qmodel/html/SGSS08.htm>.
- Guido Schryen. Is open source security a myth? *Commun. ACM*, 54:130–140, May 2011. ISSN 0001-0782.
- Niall Sclater. Enhancing and embedding a mission-critical open source virtual learning environment. In *Open Source and Sustainability*, Said Business School, Oxford, 10-12 April 2006. URL <http://www.oss-watch.ac.uk/events/2006-04-10-12/presentations/niallsclater.pdf>.
- Brett Smith. More about the App Store GPL Enforcement. FSF, May 26 2010. URL <http://www.fsf.org/news/blogs/licensing/more-about-the-app-store-gpl-enforcement>.
- Richard Stallman. Android and Users' Freedom. FSF, 2010a. URL <https://www.gnu.org/philosophy/android-and-users-freedom.html>. updated 2011, and 2014.
- Richard M. Stallman. *Free Software, Free Society: Selected Essays of Richard M. Stallman*. CreateSpace, December 2009. ISBN 1441436200.
- Richard M. Stallman. Who does that server really serve? *Boston Review*, 35(2), March 2010b. URL <http://bostonreview.net/BR35.2/stallman.php>. last accessed: August 7, 2011.
- Guy Steele and Eric S. Raymond. The Jargon File. Web pages, <http://www.tuxedo.org/~esr/jargon/>, 2000.
- Vincent Tietz, Gerald Hübsch, and Gregor Blichmann. Cloud-Entwicklungsmethoden: Überblick, Bewertung und Herausforderungen. *Informatik-Spektrum*, 34(4), August 2011. in German.
- Linus Torvalds and David Diamond. *Just for Fun: The Story of an Accidental Revolutionary*. HarperCollins, New York, 2001.

- Steven J. Vaughan-Nichols. No GPL Apps for Apple's App Store. ZD-Net, January 11 2011. URL <http://www.zdnet.com/blog/open-source/no-gpl-apps-for-apples-app-store/8046>.
- James Wallace. *Overdrive: Behind Bill Gates' Battle to Keep Microsoft on Top*. John Wiley & Sons, April 1998a. ISBN 0471254134.
- James Wallace. *Overdrive: Bill Gates and the Race to Control Cyberspace*. John Wiley & Sons, May 1998b. ISBN 0471291064.
- James Wallace and Jim Erickson. *Hard Drive: Bill Gates and the Making of the Microsoft Empire*. Harper Paperbacks, May 1993. ISBN 0887306292.
- Michael H. Warfield. Musings on open source security models. Linuxworld, April 14 2003. URL www.linuxworld.com/linuxworld/lw-1998-11/lw-11-ramparts.html.
- Gerald M. Weinberg. *Quality software management (vol. 3): congruent action*. Dorset House Publishing Co., Inc., New York, NY, USA, 1994. ISBN 0-932633-28-5.
- David A. Wheeler. Why open source software / free software (OSS/FS, FLOSS, or FOSS)? Look at the Numbers! article on the Internet, April 2007. URL www.dwheeler.com/oss_fs_why.html.
- Wikipedia. Free and open source software. Web pages, 2010. URL http://en.wikipedia.org/wiki/Free_and_open_source_software.
- Sam Williams. *Free as in Freedom: Richard Stallman's Crusade for Free Software*. CreateSpace, December 2009. ISBN 1441437886.
- James A J Wilson. Business readiness rating. Web pages, 2006a. URL <http://www.oss-watch.ac.uk/resources/brr.xml>.
- James A J Wilson. Open source maturity model. Web pages, 2006b. URL <http://www.oss-watch.ac.uk/resources/osmm.xml>.
- David Wong. Secure code. SecurityFocus.com, July 2 2002. URL <http://www.symantec.com/connect/articles/secure-coding>.
- Christoph Zott, Raphael Amit, and Lorenzo Massa. The business model: Theoretical roots, recent developments, and future research. *IESE Research Papers*, 3(WP-862), 2010. URL <http://www.iese.edu/research/pdfs/DI-0862-E.pdf>.

5 Open Licensing



by Wolfgang Leister

In this chapter we introduce and discuss the large area of licensing of different kinds of content and goods, i.e., everything that can be put under a copyright. As discussed earlier, CBPP covers phenomena such as software, content, hardware, designs, databases, public sector information, and scientific data. For many areas, the ideas of universal access, modification, and distribution of content, designs, and databases is desired. The technological progress, e.g., the introduction of *apps*¹, make it a necessity to share data.

Content should be put under a proper license, also when giving open and free access. Just providing content without license information is legally allowed, but will create confusion to how, and on what terms this content can be used. This is, e.g., relevant for public sector data. When content is properly licensed, it can be used properly by all parties. Using free and open licenses gives the possibility for everybody to build upon the knowledge of others, thus boosting innovation.

Licenses for free and open source software (FOSS) have been already discussed in Section 4.3. We discussed the term of *openness* leading to licenses such as the GPL or the BSD licenses which build on copyright, as well as *public domain*, where the copyright is waived by the creator. Software licenses are designed to be applied to software, taking into account terms like *executable code*, *source code*, or *software libraries*. Software licenses are likely not very suited for other types of content, since some of the software licenses' terms do not necessarily make sense for non-software.

Licensing is built on copyright legislation which gives the creator a time-limited right to decide how to use the creation. After the copyright has passed, the content will be in the public domain. When the creator releases content under a license, he or she still retains the copyright. Open licenses that are *non-exclusive*, therefore, make it possible that the same content can be licensed at the same time under different conditions by the creator. The open licenses do not oppose copyright; in contrary, they build upon it.

It is important to distinguish between *access* to content, such as viewing, and *use* of content, such as distributing, altering, and distributing altered content. The copyright laws address the use, but not pure access. While the copyright laws cannot be a basis for access control, a copyright holder can decide whether to distribute content with a closed or open license. The use of content includes *a*) distributing the content unaltered;

1. With *apps* we denote small applications that are downloadable to run on smartphones, tablets or in web browsers. These apps often offer the user a functionality to retrieve content, make some processing, and present the result on the screen.

With the advent of the digital revolution and the Internet, it is suddenly possible to distribute works in a variety of formats of a high, often professional quality; to work collaboratively across contexts; and to create new, derivative or collective works – on a global level, in a decentralised manner, and at comparatively low cost. This presents an opportunity for an enormous and unprecedented stimulation of creativity and production of knowledge. As more and more people are interconnected and communicating, it becomes easier to obtain exactly the content one needs or want and to complete tasks and solve problems by the cooperation this interconnection enables. The convergence of technologies and media also create multiple new possibilities for creating derivatives of existing works – for example, remixes and mashups.

The downside of these exciting new developments and possibilities is that the new technologies can also be used to violate the rights of copyright owners as they are currently defined. In turn, major right holders have reacted to this by a fourfold strategy: (1) by trying to prevent the deployment of technologies that can be put to infringing uses; (2) by developing tools that enable them to manage their rights with an amount of precision hitherto unknown and unthinkable: digital rights management and technological protection measures against unauthorised copying; (3) by successfully lobbying for support of these technological measures through legal restrictions; and, (4) by starting huge publicity campaigns designed to teach young people that they must keep their hands off copyrighted material.

Source: <http://wiki.creativecommons.org/FAQ>; accessed August 14, 2011; © Creative Commons, CC BY.

Frame 5.1. Problem description from the CC FAQ

b) distributing the content in a *collection* together with other works, where the content as such is unaltered albeit editorial changes; c) distributing adaptations and *derivative work* from the original work; and d) performing and distributing *produced work*, using content from the original work.

Copyfraud is a term used by Mazzone (2006) to describe the use of false claims of copyright to attempt to control works not under one's legal control. He describes copyfraud to include 1) claiming copyright ownership of public domain material; 2) imposition by a copyright owner of restrictions beyond what the law allows; 3) claiming copyright ownership on the basis of ownership of copies or archives; 4) and claiming copyright ownership by publishing a public domain work in a different medium. Mazzone argues that copyfraud is usually successful because there are few and weak laws criminalising false statements about copyrights and lax enforcement of such laws.

There are several initiatives, organisations, and large-scale projects looking into specific licensing problems that relate to the *digital public domain*²; *open access policies*; exceptions and limitations to copyright such as fair use and fair dealing in common law systems, or *orphan works*³.

5.1 Creative Commons

The *Creative Commons*⁴ (CC) provide creators and licensors with a simple way to say what freedoms they want their creative work to carry, as outlined in Frame 5.1. This,

2. See <http://www.communia-project.eu/about>; accessed August 24, 2011.

3. See Frame 5.2 in Section 5.3.

4. See creativecommons.org; accessed August 11, 2011.

in turn, makes it easy to share, build upon creative work, and to reserve some rights while releasing others, based on copyright legislation. Formally, *Creative Commons* is a charitable corporation in the US. James Boyle, Michael Carroll, Lawrence Lessig, Hal Abelson, Eric Saltzman, and Eric Eldred founded the CC in 2001.

The copyright laws create the traditional “all rights reserved” setting for content, that is creating an environment where a licensor (rights holder) grants rights for an identified resource (asset) to a principal (party) under certain conditions.⁵ This license is valid as long as the copyright can be applied. After that, the content will go into the public domain. While traditional licenses based on copyright are tailored to commercially exploited content, the CC licenses define a standardised way of granting copyright permissions to creators’ work for commons. The CC license and tools rooted in copyright law are suited for the growing digital commons content that is made to be copied, distributed, edited, remixed, and built upon.

Be aware that all of the CC licenses contain a disclaimer of warranties, so there is no assurance whatsoever that the licensor has all the necessary rights to permit reuse of the licensed work. This disclaimer means that the licensor is not guaranteeing anything about the work, including that she or he owns the copyright to it, or that she has cleared any uses of third-party content that her work may be based on or incorporate.

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5.1.1 Use of the Creative Commons License

When using a Creative Commons license, the creator, called *licensor* in the Creative Commons-terms, retains copyright while allowing others to copy, distribute, and make some uses of the licensed work under the conditions that the licensor finds appropriate. Creative Commons licenses work around the world, and last as long as the applicable copyright lasts. While the licensor can decide to license the content also under other terms additionally, a once granted Creative Commons license is non-revocable.

The Creative Commons licenses do not affect freedoms that the law grants to users of creative works otherwise protected by copyright, such as exceptions and limitations to copyright law like fair use⁶. Licensees must credit the licensor, keep copyright notices intact on all copies of the work, and link to the license from copies of the work. Licensees

5. See www.contentguard.com/drmwhitepapers/CGWP-FinalEng.pdf; accessed August 11, 2011.

6. *Fair use* is a limitation and exception to the exclusive right granted by copyright law to the author of a creative work. Fair use provides for the legal, unlicensed citation or incorporation of copyrighted material in another author’s work under certain conditions. Examples of fair use include commentary, criticism, news reporting, research, teaching, library archiving and scholarship. See en.wikipedia.org/wiki/Fair_use; accessed March 5, 2012.

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NonCommercial. You let people copy, distribute, display, perform, and remix your work for non-commercial purposes only. If they want to use your work for commercial purposes, they must contact you for permission.


ShareAlike. You let people create remixes and derivative works based on your creative work, as long as they only distribute them under the same Creative Commons license that your original work was published under.





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cannot use technological measures to restrict access to the work by others.⁷

Unlike proprietary licenses, the Creative Commons licenses *allow* everything that is not restricted by the licensor or by the law. It is a very important principle to allow most use of the content, and to keep the content free and open. In commercial licenses, it is the other way around, where usually everything is forbidden that is not explicitly allowed.

When choosing a Creative Commons license, the licensor needs to choose between several options that can be combined with each other. These options are each represented by a graphical symbol. All Creative Commons licenses, except the CC0-license⁸, use the symbol  which stands for *Attribution*, and means that the licensee must attribute the work in the manner specified by the author or licensor⁹. All Creative Commons licenses allow the licensee to share the content.

The licensor needs to decide whether she or he wants to allow commercial use of the material. If she or he wants to restrict commercial use, the NC-property is specified by the graphical symbol  (also denoted  in Europe, and  in Japan). The next decision is whether derivative works are allowed. If derivative work is prohibited, marked with ND or the graphical symbol , the licensee may not alter, transform, or build upon this work other than what is defined under fair use or similar.

If a licensor decides to allow derivative works, she or he may also choose to require that anyone who uses the work to make that new work available under the same license terms, called *ShareAlike* and marked with SA or the graphical symbol . ShareAlike is a copyleft feature inspired by the GNU General Public License.

7. Note that the encrypted transfer or storage of CC-licensed content is allowed, as long as also an unencrypted version can be provided.

8. The CC0-license is explained in one of the next sections below.

9. One may not suggest in any way that the licensor endorses the licensee or the licensee's use of the work.




When combined, all the options that apply are collected as a combined logo, as shown to the left; alternatively the license is described by **CC BY**, followed by **-NC**, **-ND**, and/or **-SA**; in this example **CC BY-NC-SA**. Note that not all combinations of these options make sense; e.g., the no-derivative option (ND) together with share-alike (SA) is not viable. In principle, six different licenses, in addition to the CC0-license are possible.¹⁰

The CC licenses also state a limitation on liability. The license text states that *except to the extent required by applicable law, in no event will licensor be liable to you on any legal theory for any special, incidental, consequential, punitive or exemplary damages arising out of this license or the use of the work, even if licensor has been advised of the possibility of such damages.*

5.1.2 Implementation of the Creative Commons License

The Creative Commons public copyright licenses incorporate a *three-layer-design*: 1) Each license contains a traditional legal tool, in the kind of language and text formats that most lawyers understand, that is the *Legal Code Layer* of each license. 2) Since most creators, in fact, are not lawyers, the licenses are made available in a format that lay 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, summarising and expressing some of the most important terms and conditions. 3) The final layer of the license design provides the CC licenses in a *machine-readable* summary of the key freedoms and obligations. The CC have developed the *CC Rights Expression Language* (CC REL) to accomplish this.

5.1.3 Public Domain and the CC0 License

Copyright laws automatically apply copyright protection to works of authorship, irrespective of whether the author or creator wants those rights. The License CC0, graphically marked with , gives a creator a way to give up those rights to the fullest extent allowed by law.¹¹ Once the creator or a subsequent owner of a work applies CC0 to a work, the work is no longer his or hers in any meaningful sense under copyright law. Anyone can then use the work in any way and for any purpose, including commercial purposes. Thus, the CC0 can be considered as a “no rights reserved”-option. As the other CC licenses, the CC0 License is not revocable.

To apply CC0, the *affirmer* dedicates a work to the public domain by waiving all of his or her copyright and neighbouring and related rights in a work, to the fullest extent permitted by law. If the waiver is not effective for any reason, then CC0 acts as a license from the affirmer granting the public an unconditional, irrevocable, non-exclusive, royalty-free license to use the work for any purpose. CC0 is intended for use only by creators or holders of copyright and related or neighbouring rights (including *sui generis* database rights¹²), in connection with works that are still subject to those rights in one or more jurisdictions.


10. See <http://creativecommons.org/licenses/>; accessed August 11, 2011.

11. Applying the CC0 license does not absolve creators from other legal issues than copyright.

12. Database licenses and *sui generis* database rights are explained in Section 5.2.

terms of orig. work	Terms that can be used for a derivative work						
	BY	BY-NC	BY-NC-ND	BY-NC-SA	BY-ND	BY-SA	PD/CC0
PD/CC0	•	•	•	•	•	•	•
BY	•	•	•	•	•	•	
BY-NC		•	•	•			
BY-NC-ND							
BY-NC-SA				•			
BY-ND							
BY-SA						•	

Table 5.1. Compatibility chart for derivative work

The Public Domain Mark (PDM), denoted graphically as , differs from the CC0 in the way that PDM is intended for use with works that are already free of known copyright restrictions throughout the world, e.g., because the copyright is expired.

The CC0 and PDM tools also differ in terms of their effect when applied to a work. CC0 is legally operative in the sense that when it is applied, it changes the copyright status of the work, effectively relinquishing all copyright and related or neighbouring rights worldwide. In contrast, PDM is not legally operative in any respect – it is intended to function as a label, marking a work that is already free of known copyright restrictions.

Applying a CC license, other than CC0, to a work in the public domain may constitute *copyfraud* (Mazzone, 2006). However, incorporating a work that is in the public domain into a collection that itself is protected by copyright, then one may apply a Creative Commons license to the work as a collection. Including content into a collection does not affect the status of this work. Similarly, one may apply a Creative Commons license to an adaptation of a public domain work if one holds copyright to the adaptation.

5.1.4 Derivative Work and Collective Work

When using a Creative Commons-licensed work to create a *derivative work* or adaptation, the author of the derivative work is restricted in which license can be chosen. Table 5.1 shows which licenses may be chosen, given a CC license on the left. Notice that CC-licenses containing **ND** may not be the basis for derivative work. Note also that the CC licenses do not change, alter or modify fair use rights. Therefore, an author still may use fair use rights to incorporate CC works for any qualifying purpose.

Using CC-licensed material to create a collection, denoted as *collective work*, such as anthologies, encyclopedias and broadcasts, is allowed; however, the author of the collection needs to follow the original license. In practice, this means that material under any of the Creative Commons Non-commercial licenses cannot be included in a collection that is going to be used commercially. Note that when including a Creative Commons licensed works in a collection, *the work itself* must be kept under the original license. This doesn't mean the whole collection has to be put under this CC license – just the original work. For collective work it is important that the single parts are sufficiently separable from other parts of the collection.

5.1.5 Discussion

Creative Commons licenses are non-revocable. This means that one cannot stop someone, who has obtained work under a Creative Commons license, from using this work according to that license. The copyright holder can stop distributing the work under a Creative Commons license at any time; this will not, however, withdraw any copies of the work that already exist under a Creative Commons license from circulation, be they verbatim copies, copies included in collective works, or adaptations of this work. Therefore, authors should carefully consider this before releasing a work under a CC license.

The question how the Creative Commons licenses can foster innovation needs to be discussed. Creators can earn money from their work since the CC licenses are non-exclusive, and the creator is, therefore, not tied down to only make content available under the CC license. The creator can also enter into other revenue-generating efforts in relation to her or his work. The CC license can, for instance, be used to promote the creator's work.

The non-commercial license option is an inventive tool designed to allow people to maximise the distribution of their works while keeping control of the commercial aspects of their copyright. Here, the *non-commercial use* condition applies only to others who use the work, but not to the creator (the licensor). The non-commercial condition is therefore only imposed on the licensees, i.e., the users. People who want to copy or adapt works commercially under the non-commercial license must get the creator's permission first.

All jurisdictions allow some uses of copyrighted material without permission – such as quotation, current-affairs reporting, fair use, or parody – although these vary from country to country. These usage rights are independent from the license and are not affected or changed in any way. Thus, regardless of the jurisdiction a user is in, the CC licenses do not affect a user's right to use or allow use of content under copyright exceptions and limitations.

CC licenses are made available under royalty-free¹³ licenses. In the case of CC-licensed works that are licensed for non-commercial use only, the creator or licensor reserves the right to collect statutory royalties or royalties under compulsory licenses for commercial uses such as those collected for public performances; one may still have to pay a collecting society for such uses of CC-licensed works. However, these are indirect payments, not payments to the licensor.

When several licenses are applied to a work, only one of these is effective at a time, and the user can choose which. This applies also when using CC licenses. For example, if a work, e.g., a photograph, is governed by one license CC BY-NC, plus a separate license CC BY-ND, it does not mean that both provisions apply together. A user may, for instance, make derivatives of this work, but may not use these derivatives for commercial purposes; on the other hand, the user may sell the original image for commercial purposes. An owner who wants both provisions to apply together needs to choose one single license that contains both of these.

13. *Royalty-Free* refers to the right to use copyrighted material or intellectual property without the obligation to pay royalties to the licensor.

The use of a CC license is not recommended for software, hardware or databases. For software, instead, licenses made available by the Free Software Foundation or listed by the Open Source Initiative should be considered. Unlike the CC licenses, which do not make mention of source or object code, these existing licenses were designed specifically for use with software. Furthermore, the CC licenses are not compatible with the GPL. Note, however, that the CC0 Public Domain Dedication is GPL-compatible and acceptable for software. Note also, that the CC licenses are suited for software documentation, as for all text material. For databases and hardware applicable licensing regimes are discussed later in this chapter, in Sections 5.2 and 5.4.

A CC license terminates automatically if someone uses a work contrary to the license terms. This means that, if a user uses a work under a CC license and the user, e.g., fails to attribute a work in the specified manner, then this user no longer has the right to continue to use the work. This only applies in relation to the person in breach of the license; it does not apply generally to other people who use a work under a CC license and comply with its terms. A number of options can be used to enforce the terms, e.g., by contacting him or her to rectify the situation; or by consulting a lawyer to act on one's behalf.

In addition to the right of licensors to request removal of their name from a work when used in a derivative or collective they don't like, copyright laws in most jurisdictions around the world¹⁴ grant creators *moral rights* which may provide some redress if a derivative work represents a *derogatory treatment* of the licensor's work. Moral rights give an original author the right to object to *derogatory treatment* of their work; *derogatory treatment* is typically defined as *distortion or mutilation* of the work or treatment that is *prejudicial to the honour, or reputation of the author*. CC licenses do not affect any moral rights licensors may have¹⁵. This means that having moral rights as an original author of a work, a creator may be able to take action against a creator who is using a work in a way the creator finds objectionable. Of course, not all derivative works a creator does not like are necessarily *derogatory*.

5.1.6 Legal Considerations

As mentioned, all of the CC licenses contain a disclaimer of warranties, so there is no assurance whatsoever that the licensor has all the necessary rights to permit reuse of the licensed work. The disclaimer means that the licensor is not guaranteeing anything about the work, including that she owns the copyright to it, or that she has cleared any uses of third-party content that her work may be based on or incorporate.

This is typical of so-called *open source* licenses, where works are made widely and freely available for reuse at no charge. The original version 1.0 of the Creative Commons licenses contained a warranty, but the CC organisation ultimately concluded that, as with open source licenses, warranties and indemnities are best determined separately by private bargain, so that each licensor and licensee can determine the appropriate allocation of risk and reward for their unique situation. One option thus would be to use a private

14. with the notable exception of the US except in very limited circumstances.

15. with the exception of Canada.

contract to obtain a warranty and indemnification from the licensor, although it is likely that the licensor would charge for this.

As a result of the warranty disclaimer, before using a Creative Commons licensed work, creators should ensure that they have all the necessary rights to make the work available under a CC license. A user who is wrong in this assumption could be liable for copyright infringement based on use of the work. Additionally, CC licenses do not give permission to use any trademarks that may be associated with a CC-licensed work. In this case, the owner of a trademark needs to be asked for permission first.

5.1.7 Technical considerations

The Creative Commons offer the so-called partner interface that helps web-developers to license content in an open way. Using this interface for interactive content implies three steps: (1) letting users select a license by filling out a web form; (2) processing and storage of license information; and (3) display of license information. For other content, the Creative Commons offer diverse logos on their web site.

The Creative Commons Rights Expression Language (CC REL) is a specification for how license information may be described using the Resource Description Format (RDF) by the W3C (Beckett and McBride, 2004), and how license information may be attached to works. A rights expression language (REL) is a machine-processable language that expresses the rights one has in relation to content. A REL is a formal language, and differs from legal language in that it can be interpreted unambiguously by computers.

According to Abie (2009)¹⁶, DRM refers to the use of technologies which (1) unambiguously identify and describe digital information objects protected by intellectual property rights (IPR), (2) enforce fine-grained rules of usage for, and rights of access to, them, (3) monitor and track them, and (4) provide a secure infrastructure for their creation, distribution, storage, manipulation and communication, and finally (5) protect the privacy of users. While this definition addresses IPR in general, there are provisions in the copyright law that are difficult to enforce, such as the social and legal concepts of fair use. Currently, DRM is not conceived as an implementation of copyright law (González, 2005, p. 65). While copyright does not attempt to anticipate every possible use of a copyrighted work, DRM is based on allowing access according to specified rules. Note that copyright only addresses the use of content rather than to access to content. While the copyright law is an expression of “everything that is not forbidden is permitted”, DRM takes the approach of “everything that is not permitted is forbidden”.

Rights expression languages express IPR rules, such as the expression of copyright, and the expression of contract or license agreements. Also, it is a clear purpose of these expressions to control over access and use. A machine-actionable REL must use a formal, machine-readable language in order to be included in DRM.

González (2005) compares three different REL definitions according to their suitability

16. See Definition 5 in the book by Abie (2009).

for expressing copyright law: (1) the CC REL; (2) the ODRL REL (Iannella, 2002); and (3) the MPEG-21 REL (ISO, 2004). A similar comparison of four REL definitions is done by Coyle (2004).

The **The MPEG-21 REL** (ISO, 2004) is a part of the MPEG-21 standard (ISO 21000) (Burnett et al., 2006) that works in a trusted environment. The MPEG REL data model for rights expression consists of four basic entities and the relationship among these. This relationship is defined by the *assertion grant*, which consists of (a) the principal to whom the grant is issued; (b) the right that the grant specifies; (c) the resource to which the right in the grant applies; and (d) the condition that must be met before the right can be exercised. While the MPEG-21 REL is typical for languages that are based on the traditional IPR, Rodríguez and Delgado (2006) present how to achieve interoperability between MPEG-21 REL and the CC licenses.

The **The Open Digital Rights Language (ODRL)** by the W3C (Iannella, 2002) is a general-purpose language that allows, but does not require, actionable control over resource use. Iannella (2005) presents a draft of a Creative Commons profile for ODRL.

The **CC REL** is designed to describe the CC license in the terms of the copyright law. In contrast, MPEG-21 REL and ODRL are focused on the parties (e.g., issuer) to the license, but do not refer to copyright. The CC licenses in their machine-readable form tie the descriptions of *work* (as Dublin Core metadata elements) and *license* together. (González, 2005, Section 5.3) shows more technical details on the implementation of the CC REL.

5.1.8 Business Models for CC

In many ways, the business models for CC follow similar arguments as the business models for FOSS described in Section 4.7. Cross subsidisation and promotion are some of the major elements. As the CC are designed for creative works, some creators are not dependent on rights exclusion. Benkler (2007, p. 45) notes that creators can charge for the relationship rather than for the information.

In the classical business model for creative works, a rather small number of creators distribute via intermediaries (often using a copyright assignment) to as large an audience as possible. As costs for the distribution go down, and the *prosumer* enters the scene, there is less place for the intermediaries. Thus, new business models emerge using the CC licenses. The selection of the appropriate attribute, such as ND or NC is essential for the success, different in each single case.

Foong (2010) discusses examples from the film industry, and other creative areas how business models can be applied using the CC licenses. Feature films like *StarWreck* or *Cafuné* overcome limited exposure by using CC. These films are said to have innovated the film business. Other examples of CC business models include the music industry, where artists share their music using CC, but sell concert tickets and collector's items; lecturers share the slide show, but charge for a presentation; scientists use CC as a proof of their competence; and so on.

Connect with Fans (CwF). *Content as a product gives way to content as a service*, as Shirky notes. The direct and instantaneous nature of sharing content with fans over the Internet has the potential to create a sense of closeness between the creator and their fans (Foong, 2010). CwF needs to be combined with the *Reason to Buy* outlined in the following paragraph.

Reason to Buy (RtB). The RtB is a voluntary transaction, and a form of demand that is not artificially created by imposing legal scarcity on the work. Permission marketing is the privilege (not the right) of delivering anticipated, personal and relevant messages to people who actually want to get them (Godin, 2008). In this model, the creator, and the connection to the creator become the product; the relation to the creator becomes a value that cannot be substituted by the work that is distributed. Additionally, social pressure can enforce an RtB.

Services. Intermediaries, such as publishers, can offer services to the creators of CC, such as printing, distributing, copying, etc. Open Publishing is one business model, where the content is freely available while the publisher charges a moderate fee from the creator, and offers premium versions, such as a printed edition of the content.

5.2 Open Knowledge and Open Data

The term *open data* follows the idea that as much data as possible should be freely available to everyone to use and republish as they wish, without restrictions from copyright, patents, or other mechanisms of control.¹⁷ The access to data, stored in databases or otherwise made available, is becoming more important, especially for scientific data, with the purpose to benefit science; and public sector data, with the purpose to foster a more smoothly working information exchange for the citizens. New developments, e.g., the increased use of *apps* on many kinds of devices, make it necessary to access several data sources, and create a result that is presented to a user. Also the advent of *Linked Open Data* (LOD) has an important impact. In most jurisdictions there are intellectual property rights on data that prevent third-parties from using, reusing and redistributing data without explicit permission.¹⁸

Miller et al. (2008) point out that *copyright protection applies to acts of creativity, and categorically extends neither to databases nor those non-creative parts of their content*. While some individuals or organisations apply CC licenses to data, there is no meaningful legal basis to this.¹⁹ In some legislations, such as the US, the copyright can be applied to creative content, but not to databases. As counterexample, in the EU the Database Directive 96/9/EC

17. See http://en.wikipedia.org/wiki/Open_data; accessed August 17, 2011.

18. The text of this section is partially derived from *Open Definition* <http://www.opendefinition.org/guide/data/>; accessed August 15, 2011, and *Science Commons* <http://sciencecommons.org/resources/faq/databases>; accessed August 15, 2011, which are licensed CC BY.

19. This is one of the reasons why, for instance, OpenStreetMap is shifting license from CC BY-SA to the ODbL license explained later in this section.

Open data is often focussed on non-textual material such as maps, genomes, connectomes^a, chemical compounds, mathematical and scientific formulae, medical data and practice, bio-science and biodiversity. Problems often arise because these are commercially valuable or can be aggregated into works of value. Access to, or re-use of, the data is controlled by organisations, both public and private. Control may be through access restrictions, licenses, copyright, patents and charges for access or re-use. Advocates of open data argue that these restrictions are against the communal good and that these data should be made available without restriction or fee. In addition, it is important that the data are re-usable without requiring further permission, though the types of re-use (such as the creation of derivative works) may be controlled by license.^b

Source: © Wikipedia; licensed CC BY-SA.

a. A connectome is a comprehensive map of the human brain. See <http://en.wikipedia.org/wiki/Connectome>; accessed August 21, 2001.

b. See http://en.wikipedia.org/wiki/Open_data; accessed August 17, 2011.

creates a legal basis for copyright protection of databases. Miller et al. discuss these issues, present existing licenses as of 2008, and give a historic outline.

Databases usually are comprised of at least four elements: (1) a structure (or database model), which includes the organisation of fields and relations among them; (2) data sheets; (3) a set of field names identifying the data; and (4) data. All of the CC licenses can be applied to these elements to the extent that copyright applies to them. Copyright applies to minimally creative works expressed in a fixed form. In most databases, items (1) and (2) – the structure and the data sheet – will reflect sufficient creativity for copyright to apply. A CC license applied to these elements will permit copying of these elements under the conditions of the license selected.

There are three things to keep in mind when considering whether to apply a CC license to a database: (1) that the necessary rights or permissions have been obtained to make a database and any copyrightable elements are available under a CC license; (2) that only those parts of the database that the database provider wants to make available under a CC license are so licensed; and (3) if not all aspects of the database are protected by copyright, there should be a clear statement to this effect to indicate to users which aspects are subject to the license and which are not.

This distinction between the *contents* of a database and the database as a *collection* is especially crucial for factual databases since no jurisdiction grants a monopoly right on individual facts, i.e., the *contents*, even though it may grant right(s) to them as a collection. To illustrate, consider the simple example of a database which lists facts from natural science. While the database as a whole might be protected by law so that one is not allowed to access, reuse or redistribute it without permission this would never prevent anybody from stating a single fact stored in the database.

We should point out that barring any legal protection many providers of (closed) databases are able to use a simple contract (e.g., a EULA) combined with legal provisions prohibiting violation of access-control mechanisms to achieve similar results to a formal IP right,

With databases, there are likely four components to consider:

- (i) **The database model** is a specification describing how a database is structured and organised, including database tables and table indexes. The selection, coordination, and arrangement of the contents is subject to copyright if it is sufficiently original. The threshold of originality required for copyright is fairly low in many jurisdictions. [...] These determinations are very fact-specific and vary by jurisdiction.
- (ii) **The data entry & output sheets** contain questions, and the answers to these questions are stored in a database. For example, a web page asking a scientist to enter a gene's name, its pathway information, and its ontology would constitute a data entry sheet. The format and layout of these sheets are protected by copyright according to the same standard of originality used to analyse copyright in the database model.
- (iii) **Field names** describe data sets. For example, *address* might be the name of the field for street address information. These are less likely to be protected by copyright because they often do not reflect originality.
- (iv) **The data** contained in the database are subject to copyright if they are sufficiently creative. Original poems contained in a database would be protected by copyright, but purely factual data (such as gene names without more) contained in a database would not. Facts are not subject to copyright, nor are the ideas underlying copyrighted content.

Source: © Creative Commons, <http://wiki.creativecommons.org/Data>; accessed March 1, 2012 CC BY.

e.g., requiring users to log in with some credentials.

Forms of protection fall broadly into two cases: (1) Copyright for compilations; and (2) A *sui generis*²⁰ right for collections of data. However, there are no general rules and the situation varies by jurisdiction. The EU Database Directive 96/9/EC creates a legal basis for copyright protection of databases²¹. It is designed to let licensors explicitly use the copyright laws as a basis for licensing.

5.2.1 Open Data Commons

The *Open Data Commons* (ODC), created in December 2007 by Jordan Hatcher, is a project run by the *Open Knowledge Foundation*²² (OKFN). The OKFN defines open data, open content and open services²³. The *Open Knowledge Definition* (OKD) shows principles for licensing any kind of open content or data:²⁴ The OKD states:

A piece of content or data is open if anyone is free to use, reuse, and redistribute it – subject only, at most, to the requirement to attribute and share-alike.

20. *sui generis*: latin: of its own kind; unique in its characteristics; denotes an idea, an entity, or a reality which cannot be included in a wider concept.

21. The EU Database Directive 96/9/EC is available at http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=31996L0009&model=guichett; accessed August 15, 2011. See also <http://www.opendefinition.org/guide/data/>; accessed August 15, 2011.

22. See okfn.org; accessed August 15, 2011.

23. See opendefinition.org; accessed August 15, 2011.

24. Open Definition states that the OKD sets out principles to define openness in knowledge – that is any kind of content or data from sonnets to statistics, genes to geodata.

The OKFN also gives the *Open Software Service Definition (OSSD)* (Villa, 2007) that defines openness in relation to online (software) services

A service is open if its source code is Free/Open Source Software and non-personal data is open as in the OKD.

The OKFN lists a set of OKD-conformant licenses, and discusses *open government data and content*, *open data in science*, and *open bibliographic data* separately. For data and databases the ODC offers four different licenses²⁵ which have become a standard way to license open data:

PDDL. The Public Domain Dedication and License²⁶ places the data and/or the database in the public domain, which means waiving all rights.

ODC-BY. The Open Data Commons Attribution License²⁷ allows the user to share (copy, distribute and use the database), create (produce works from the database), and adapt (modify, transform and build upon the database), as long as proper attribution is given. The user 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, the user must make clear to others the license of the database and keep intact any notices on the original database.

ODbL. The Open Database License²⁸, also denoted as *Attribution Share-Alike for data and databases*, allows the user to share, create, and adapt, as long as proper attribution is given in similar terms as for the ODC-BY license. Additionally, if the user publicly uses any adapted version of this database, or works produced from an adapted database, he or she must also offer that adapted database under the ODbL. If a user re-distributes the database, or an adapted version of it, then he or she may use technological measures that restrict the work, such as encryption or DRM, as long as he or she also redistributes a version without such measures. When creating or using a *produced work* publicly, a notice must be included with the produced work so that persons exposed to it are aware where the content was obtained from.

DbCL. The Database Contents License²⁹ waives all rights to the *individual contents* of a database licensed under the ODbL. The role of the DbCL is that data retrieved from a database can be used in an open database licenses, specifically the ODbL.

Note that the ODC licenses do not disallow commercial use; i.e., there is no ODC license with an NC-attribute. Likewise, there is no ODC license with an ND-attribute.

Besides the dimensions of *collective* and *derivative* databases the ODC licenses use the term *produced work* for work resulting from using the whole or a substantial part of the contents from a database, a derivative database, or a database as part of a collective

25. See <http://opendatacommons.org/faq/licenses/>; accessed August 15, 2011.

26. See <http://opendatacommons.org/licenses/pddl/>; accessed August 15, 2011.

27. See <http://opendatacommons.org/licenses/by/summary/>; accessed August 15, 2011.

28. See <http://opendatacommons.org/licenses/odbl/summary/>; accessed August 15, 2011.

29. See <http://opendatacommons.org/licenses/dbcl/>; accessed August 15, 2011.

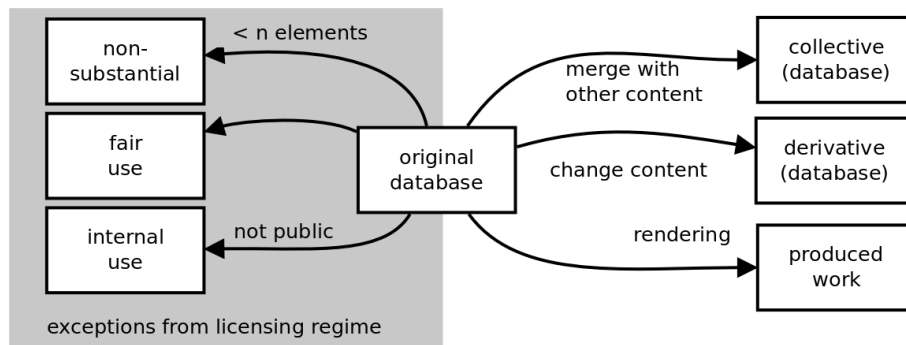


Figure 5.1. Different dimensions when conveying a database

database. Produced work can, e.g., be images, audiovisual material, text, or sounds. For produced work, the license notice only needs to be made if the produced work is used publicly. It is still under discussion whether attribution for produced work is required, as the current version of the license does. Note that also derivative databases used in the creation of publicly available produced works are subject to share-alike³⁰. The creation of a collective database does not require the collective database to be share-alike.

The term *convey* means in this context using a database, a derivative database, or a database as part of a collective database in any way that enables a person to make or receive copies of the database or derivative database. Note that conveying does not include interaction with a user through a computer network, or creating and using a produced work, where no transfer of a copy of the database or derivative database occurs.

In Figure 5.1 we show what happens when conveying data from a database: (1) conveying the data in the database are considered as a derivative database; (2) combining databases with different types of content will result in collective work; (3) rendering the content to a graph or an image will result in a produced work. Besides these three categories, we find (4) internal use, i.e., the content or the produced work is not public; (5) fair use, which is an exception from the copyright; and (6) non-substantial use of data, which means a non-repetitive and non-systematic access of very few elements for whatever purpose.

5.2.2 Closed Data and Restrictions to Openness

For the sake of completeness, we list intentional or unintentional mechanisms for restricting access to or re-use of data. These include (a) access control; (b) proprietary or closed technologies or encryption to create barriers for access; (c) copyright forbidding re-use of data; (d) licensing forbidding re-use of data; (e) patents forbidding re-use of data; (f) access restrictions for certain access, such as for search engines; (g) time-limited access such as subscription-based services; and (h) political, commercial or legal pressure.³¹ Provided that the owner of a service providing closed data is not committing copyfraud, the owner of such services is in his or her full right to offer data with the above restrictions, and close the data for commercial or other reasons. While this might be common practice for com-

30. See opendatacommons.org/news/; accessed August 19, 2011.

31. See http://en.wikipedia.org/wiki/Open_data; accessed August 17, 2011.

mercial entities, the data should be opened up by the service when there is a common public interest in services based upon these data.

As an example of data that contain licensing restrictions to openness, we mention the ASTER GDEM site which distributes geographic elevation data. While the data are freely available for download, the users must register. Derivatives of the data are allowed, but the derived data can only be distributed if the original data are not possible to reconstruct from the derived data set.³² Thus, simple format transformations are not allowed to be distributed while re-sampled data are.

5.2.3 Open Data in Science

Science is based on building on, reusing and openly criticising the published body of scientific knowledge. For science to effectively function, and for society to reap the full benefits from scientific endeavours, it is crucial that scientific data be made open³³, i.e., freely available on the public Internet permitting any user to download, copy, analyse, re-process, or use them for any other purpose without financial, legal, or technical barriers other than those inseparable from gaining access to the Internet itself. The Panton Principles³⁴ advocate that all scientific data should be explicitly placed in the public domain, but also embrace open licenses. They discourage licenses that limit commercial re-use or limit the production of derivative works by excluding use for particular purposes or by specific persons or organisations.

For scientific data, no separate licenses are necessary. However, the Panton Principles discuss the use of open data and their licenses, especially whether third-party data can be combined with open data, and released as open data. While they mention restrictions that may forbid this, they recommend to make a judgement whether data might be facts, whether it is likely to infringe “sui-generis” rights, and to adhere to community norms. We discuss some of the problems connected to mixing incompatible licenses below.

5.2.4 Linked Open Data

The term *linked data* describes a method of publishing structured data so that these can be interlinked and become more useful. Linked data builds upon the following four steps:³⁵ (i) use URIs as names for things; (ii) use HTTP URIs to be able to look up those names; (iii) when someone looks up a URI, provide useful information, using standards such as RDF (Beckett and McBride, 2004) or SPARQL (Prud’hommeaux and Seaborne, 2008); (iv) include links to other URIs which can be followed. In this way, the data of different databases are interlinked. While this principle works with all databases a user can access, the full potential can only be unleashed when there is open access to all the necessary data. If some data are closed, and thus unavailable to some users, a service using linked data can fail to provide high-quality results.

32. See <http://www.gdem.aster.ersdac.or.jp/faq.jsp>; accessed March 4, 2012.

33. Note that single facts are always open; however, a collection of facts may be protected, as may be observations from experiments.

34. See pantonprinciples.org; accessed August 24, 2011.

35. See http://en.wikipedia.org/wiki/Linked_data; accessed August 17, 2010.

Linked Open Data (LOD) combines open data with linked data, given proper license conditions. Access restriction as well as data license incompatibilities can affect the quality of a service using linked data. Combining data with LOD technology from many open databases³⁶, as used for science, is for the benefit of all.

Combining data in a derivative or produced work requires that the licenses for the combined data (mashup) are compatible if intended for public use. Specifically, the share-alike property can have an impact on whether a mashup of two databases is possible. This problem might even have an impact on the design of a system.

Tsiavos (2011) points out that there are two types of potential license incompatibilities:

(a) Incompatibilities due to different licensing terms, e.g., mashing incompatible CC licenses, or CC licenses and All Rights Reserved, or CC and ODbL in the wrong way; i.e., not as container (ODbL) and contained (CC) but rather as database with database. This may only be resolved by re-licensing the sources with compatible licenses. this effectively means taking new permissions by the original licensors.

(b) Incompatible due to other legal constrains, mainly personal data. This means, that before the data are anonymised or consent is obtained, they cannot be licensed. Anonymising or obtaining consent may lead to further problems with the data protection law, as the consent has to be specific, and opening up the data makes the consent very broad. This is actually not a matter of incompatibility but rather a specific legal problem which can only be solved if one adheres to the specific data protection laws of the jurisdictions where the original processing takes place.

Consider, for instance, a service on the Internet that creates a produced work, such as a chart, from open data licensed with a share-alike property (CC BY-SA), and personal data that are by law not allowed to be shared. This could be a relevant case for scientists who want a graphical presentation of their findings. From the discussion above we conclude that a derivative database cannot be created without first creating a dataset that contains no personal information, and that can be licensed with a compatible license to the open data. Note also, that this problem also affects produced work, since the current version of the ODbL license states this explicitly. If a produced work from the two data sources is not public, or if one uses the copyright exception of fair use, then the produced work can be created, provided that no external services are used to do the processing.

Tsiavos (2011) recommends to have (a) meta-data fields containing the license types; (b) license compatibility wizards³⁷; and (c) data protection compliance tools³⁸. This would at least show that one has taken all reasonable measures to avoid IPR infringements and data protection violations, though it would not indemnify or absolve the creator of all liability.

36. See <http://www.w3.org/wiki/SweoIG/TaskForces/CommunityProjects/LinkingOpenData>; accessed August 17, 2011.

37. such as the JISC www.web2rights.com/OERIPRSupport/creativecommons/; accessed August 24, 2011.

38. or at least a metadata field asking if data are personal and/or sensitive, and if they have been anonymised or consented.

5.2.5 Business Models

In many ways, the business models for data commons follow similar arguments as the business models for FOSS described in Section 4.7, and for the CC described in Section 5.1.8. Cross subsidisation and promotion of services are some of the major motivations for the data owners, while other enterprises can contribute with diverse services and application development around these data. Tammisto and Lindman (2011) present case studies for open data business models for businesses in Finland. They distinguish as business models for open data between *consulting*, *conversion*, *application*, and others.

Cross subsidisation. In many cases, the data owners are interested in distributing their data cost-effectively to as many potential customers as possible; e.g., time tables for (public) transport. Considering value also as non-monetary, the public sector can be considered a special case of cross subsidisation when citizens can access data freely. However, some types of data can only be accessible as a service, e.g., due to privacy reasons. Note that such data in the public sector previously have been licensed to enterprises who have used proprietary business models to distribute these data; of course, these enterprises oppose a change to open data licenses.

Presentation of Data. The development of web applications and mobile services to present (open) data (so-called *apps*) can be used as a business model by software developers. These *apps* often can be purchased for a rather small fee from an *app store*. Note the tight relations to the business models for software. Examples are *apps* for public transport, maps, weather, etc. Some of these *app* developers also include advertisement into their products; note, however, that selling advertisements in connection with open data is a business model for the *app* developer rather than the data owner.

Refinement and Processing. Some enterprises use open data and refine, convert, and process these either as a service for a paying customer or they offer refined data as a service. As an example, *geofabrik.de* offers consulting, training, and software development for OpenStreetMap, including activities to create data sets on specific subjects.

Linking together several data sets, transforming and processing these, especially in connection with linked open data (LOD) is one possibility that enterprises can offer as a service, in application development, or as consulting.

Public Data. Some private enterprises get paid to create and maintain data for the public sector, such as weather forecasts and measurements, maps, statistics, etc. While these data have been in the ownership of public institutions, the companies get a revenue both from the government, and from customers using their services and products. Opening up these data might threaten their source of income. The customers of the services might feel that they pay twice, via taxes and by paying for the services.

5.3 Governmental Licenses

The public sector needs to provide both citizens, enterprises, and others with information. In order for the society to work, citizens and decision makers need to be informed based on data made available. Without useful access to data, society eventually will suffer due to decisions based on wrong assumptions.³⁹ In many cases, public sector data is not open and free. Examples include that one has to pay a fee to access registered data for building applications, that one has to pay license fees to the organisation administering geodata when buying a map, or that meteorological data might be subject to license fees.⁴⁰

Many governments and public sector organisations want, for the benefit of a better working society, the access to information to be open and free. For instance, this is stated by the Norwegian Government in the Soria Moria II Declaration (Stoltenberg et al., 2009, p. 56):

[The Government shall]

...see to it that information of public interest as a rule should be free, accessible and available for everyone in digital form

Inspired by the blog entry by Lunde-Danbolt (2010) we present considerations on which elements an open license for public sector data should contain.

The copyright laws distinguish between (1) economical and (2) ideal rights to a work. The economical rights include the right to copy, and the right to decide whether it shall be made available to the public; in contrast, ideal rights include the right to be credited (attribution), and to be treated with respect: a work shall not be published in a way that violates a creator's or the work's reputation. This is also valid for public sector data. On the one hand, data should be freely available, while, on the other hand, the owner of the data wants to be credited, wants to assure that the data are not used to harm the owner's repudiation, and wants to assure that the data are only used in a lawful way.

In addition to economical conditions and ideal conditions, a data owner also might want to set certain terms of use, such as terms for access (e.g., registering for download), data freshness, or conditions for service quality.

Elements, such as (a) attribution, (b) no derivatives, and (c) share-alike are similar to the conditions of the CC licenses. Also the fact that the data owners accept (d) no liability, is similar to the CC licenses. Some of the data owners require (e) obligations to register any

39. A recent example in Norway tied to the service `fiksgatami.no` shows the importance of openly accessible data in the public sector. Reinholdtsen (2011) indicates in an email that requests to `fiksgatami.no` are forwarded to the wrong municipality since the borders between municipalities are not available to the underlying service based on data from OpenStreetMap with the necessary resolution. The correct data are owned by the Statens Kartverk who are currently not sharing these data under an open license. If these data were available to the `fiksgatami.no` service or its underlying services, wrongly re-directed requests to municipalities could have been avoided.

40. In Norway, the Statens Kartverk requires license fees for geodata while the personal access to interactive maps is granted without fees. Meteorological data are now freely available, e.g., through the web site `yr.no`.

An *orphan work* is a copyrighted work for which the copyright owner cannot be contacted. In some cases the name of the creator or copyright owner of an orphan work may be known, but other than the name no information can be established. Reasons for a work to be orphan include that the copyright owner is unaware of their ownership, or that the copyright owner has died or gone out of business, and it is not possible to establish to whom ownership of the copyright has passed.

Source: en.wikipedia.org/wiki/Orphan_works © Wikipedia, CC BY-SA.

Frame 5.2. Orphan works

download or use of data. Some data owners require (f) intermediate storage to avoid that their server infrastructure suffers from overload. With the increased use of ‘apps’ that download data, this problem has strongly increased lately⁴¹. Since the data users have certain expectations to data freshness, data owners can specify (g) terms for update, i.e., how often data need to be downloaded so that the application uses useful data. Also, data owners can specify (h) formats, service quality, up-time, etc. in their terms, including the mechanism for (i) versioning, if applicable. Note that terms (g) to (i) are *terms of service* rather than being an issue for licensing.

In practice today, many public sector data are made available without clear license or terms of use. Therefore, data cannot be used properly. Sometimes, unclear licenses are applied which are special-purpose, and often difficult to interpret legally.

Another growing problem for public sector data are *orphaned data*, where the copyright holder is unknown, or otherwise unavailable. The term *orphan works* is defined in Frame 5.2. These data need to be properly licensed in order to provide complete services. Note that data where the copyright has ceased are in the public domain. An example for these data are maps and geodata older than a certain number of years.

In the following, we discuss the UK *Open Government License* and the Norwegian *NLOD* in more detail. Other governments, such as the US-based *data.gov* also provide open data; however, it is rather difficult to find out which license they are using.

5.3.1 Open Government License

In the Open Government License (version 1.0)⁴² in the UK the licensor grants the licensee a worldwide, royalty-free, perpetual, non-exclusive license to use the information subject to the condition that the attribution statement specified by the information providers is included. The licensee is free to (i) copy, publish, distribute, and transmit the information; (ii) adapt the information; (iii) exploit the information commercially for example, by combining it with other information, or by including it in a product or application. The licensee must ensure that data are not used in a way that suggests any official status or

41. Solutions to this problem include download size limitations, obligation to register, exclude certain applications, etc.

42. See <http://www.nationalarchives.gov.uk/doc/open-government-licence/>; accessed August 15, 2011.

that the information provider endorses the licensee or his or her use of the information. It also must be ensured that neither the information nor its source are misrepresented, and that the data protection act, respectively the EU Privacy and Electronic Communications Regulations 2003, are not breached. In case the licensee fails to comply to these conditions the license will automatically end.

The Open Government License does not cover the use of (i) personal data in the information; (ii) information that has neither been published nor disclosed under information access legislation; (iii) departmental or public sector organisation logos, crests, etc.; (iv) military insignia; (v) third party rights the information provider is not authorised to license; (vi) information subject to other intellectual property rights, including patents, trademarks, and design rights; and (vii) identity documents, such as passports and drivers licenses.

5.3.2 NLOD

The *Norsk Lisens for Offentlige Data* (*engl.* Norwegian License for Public Data, NLOD)⁴³ has been in a hearing phase by the *Fornyingsdepartementet* (*engl.* Norwegian Ministry of Government Administration, Reform and Church Affairs) (Lunde-Danbolt, 2011). Lunde-Danbolt (2010) gives considerations made while creating the NLOD, while comments during the hearing phase are available (nlo, 2011).

While the creators of the license envisioned the possibility to choose between a variety of licenses⁴⁴, the license that is currently in a hearing process is similar to, and compatible with the CC BY license. As of March 2012, data licensed with NLOD include diverse statistics data, data from public transportation and aviation, traffic information for roads, data from libraries, weather data, prices for electricity, and results from municipal elections.⁴⁵

5.4 Hardware Licenses

Open Hardware, also open source hardware⁴⁶⁴⁷ (OSHW) consists of physical artifacts of technology designed and offered in an open way. OSHW has many similarities with FOSS. The term OSHW is usually applied to information about hardware design, such as mechanical drawings, schematics, bill of materials, source code in a hardware description language, printed or integrated circuit layout data, in addition to the software that drives the hardware.

Rather than creating a new license, some open source hardware projects use existing, open source software licenses, such as the BSD, GPL and LGPL licenses. However, de-

43. See <http://data.norge.no/nlod/>; accessed August 15, 2011; an annotated version is available at <http://data.norge.no/nlod/annotert-lisens/>; accessed August 15, 2011; in Norwegian only.

44. denoted as “clause buffet”.

45. See <http://data.norge.no/data/>; accessed March 1, 2012.

46. See http://en.wikipedia.org/wiki/Open-source_hardware; accessed August 22, 2011.

47. The principles and definition of OSHW is given at freedomdefined.org/OSHW; accessed August 23, 2011. This definition is similar to the definition of FOSS, except some adaptations that are specific to hardware.

spite superficial similarities to software licenses, most hardware licenses are fundamentally different for various reasons: (a) The final product is a material good that cannot be copied with nearly zero costs, as is the case with software. Therefore, the license can only be applied to the design rather than to the final product. (b) The design and the documentation can be considered as the “source code” of the hardware. To the design and to the documentation software and content licenses could be applied. However, using content licenses, the relationship between a document and the resulting hardware cannot be expressed. Using software licenses, not all terms really make sense, while other terms are undefined. (c) By nature, hardware licenses typically rely more on patent law than on copyright law. Whereas a copyright license may control the distribution of the source code or design documents, a patent license may control the use and manufacturing of the physical device built from the design documents.

McNamara (2007) defines four possible levels of openness in open hardware projects: (1) *closed*: any hardware for which its creator does not release any information; (2) *open interface*: documentation on how to make a piece of hardware perform its designed function is available (minimum level of openness); (3) *open design*: documentation is provided so that a functionally compatible device could be created by a third party; (4) *open implementation*: additionally, the complete bill of materials necessary to construct the device is available.

5.4.1 The TAPR Open Hardware License

Ackermann (2009) presents the motivation for open source hardware licenses based on the design process for hardware. He develops the Tucson Amateur Packet Radio Corporation⁴⁸ (TAPR) Open Hardware License⁴⁹ (OHL). The TAPR OHL is designed in the spirit of the GNU GPL, but the OHL is not primarily a copyright license. While copyright protects documents, software, and data from unauthorised copying, modification, and distribution, it does not apply to make, distribute or use a hardware design based on these documents. Although the OHL does not prohibit anyone from patenting inventions embodied in an open hardware design, and cannot prevent a third party from enforcing their patent rights, those who benefit from a design licensed under the OHL may not bring lawsuits claiming that this design infringes their patents or other intellectual property. Note that the OHL addresses the issues of creating tangible, physical things, but does not cover software, firmware, or code loaded into programmable devices, for which the GPL suits better.

The OHL states in its preamble that a licensee can modify the documentation and make products based upon it. These products may be used for any legal purpose without limitation. Such products may be distributed to third parties if the respective documentation is made available to anyone who requests it for at least three years. The unmodified documentation may be distributed only as the complete package as received. Modified documentation or products based on it may be distributed under the OHL license (share-

48. See www.tapr.org; accessed August 23, 2011.

49. See www.tapr.org/ohl.html; accessed August 23, 2011.

alike). Additionally, all previous developers who have stated their email address need to be informed about the new changes according to rules stated in the license. Making documents available to others includes the requirement that both the previous version, as well as the changed version need to be included, as well as a text file that describes the changes.

The OHL also addresses that patents or registered designs held by the licensor can be used by the licensee to the extent necessary. Note, however, that the licensor cannot grant rights for patents or registered designs he or she does not own.

Some of these requirements are different from software licenses. The requirement to inform the previous creators explicitly, and the requirement to include both the “before” and “after” versions are specific to the TAPR OHL.

According to Paul (2007) the Open Source Initiative (OSI) with its president Eric S. Raymond expressed some concern about certain aspects of the OHL, since the term “distribution” is differently interpreted in some parts.

5.4.2 The CERN Open Hardware License

The CERN OHL⁵⁰ is a recent open hardware license. The terms of the CERN OHL are similar to the TAPR OHL.

5.4.3 Business Models

Menichinelli (2011) presents business models for open hardware.⁵¹ According to Ferreira and Tanev (2009) there is little specific research on open hardware business models available. They examined four companies, 88 market offers and 93 open hardware projects in order to identify seven business models. With this, they extend the list of four business models presented by Salem and Khatib (2004). The business models presented by Ferreira and Tanev include: (1) services, such as customisation, expertise, and consulting over owned or third party open hardware; (2) manufacturing of owned or third party open hardware; (3) manufacturing of proprietary hardware based on open hardware; (4) dual licensing (as in FOSS); (5) proprietary hardware designs based on open hardware; (6) hardware tools, e.g., development boards for testing and verification, for open hardware; and (7) proprietary software tools for developing open hardware.

5.5 Equity-based Licenses

The *equity-based licenses*⁵² are approaches that aim to radicalise the existing mainstream copyleft approaches such as the CC SA and the GNU GPL approach, in the sense of more equity. In these approaches, ownership, as well as economic, ethical and democratic

50. See <http://www.ohwr.org/cernohl>; accessed August 23, 2011.

51. See also the presentation of open hardware business models by David Rowe at <https://fossbazaar.org/content/david-rowe-open-hardware-business-models>; accessed February 1, 2012, presented at linux.conf.2009.

52. See http://p2pfoundation.net/Equity-based_Licenses; accessed February 19, 2012. The term *equity* refers to fairness; see <http://en.wikipedia.org/wiki/Equity>; accessed March 1, 2012.

rights and duties are introduced in addition to existing licensing schemes. Though using share-alike, the equity-based licenses are not compatible with the CC SA licenses.

5.5.1 Peer Production License

The Peer Production License (Magyar and Kleiner, 2010), derived from the CC BY-SA-NC license, restricts commercial exploitation of works only for worker-owned businesses or worker owned collectives where all financial gain, surplus, profits and benefits produced by the business or collective are distributed among the worker-owners. This means that enterprises need a certain form of organisation, e.g., being organised as a cooperative, in order to use the Peer Production License. Kleiner (2010) rejects the Creative Commons since he claims that the pick-and-choose licenses of the CC allow arbitrary restrictions by the authors, rather than keeping content free.⁵³ Though derived from the CC BY-SA-NC license, the peer-production license is not compatible with the CC SA licenses.

As a rationale behind the Peer Production License, Kleiner claims that *while copyleft is very effective in creating a commons of software, to achieve a commons of cultural works requires copyleft, a form of free licensing that denies free access to organisations that hold their own assets outside the commons*. One reason for this distinction is that artwork is consumer demand rather than capital demand, like for software. Kleiner concludes that copyleft must become *copyleft* which insists on workers right to own means of production.

5.5.2 IANG License

The IANG license⁵⁴ by Patrick Godeau is a free license for any type of intellectual creation that allows users to use, analyse, modify and distribute the creation to which it applies. It attributes economic rights in that it guarantees to everyone the freedom to access the accounting of each commercial distribution of the creation, and entrusts its economic management to those who finance it by their donations, purchases or investments. As a democratic exercise, it allows every person contributing to a creative or economic project based on the creation to participate in decisions concerning this project.

5.5.3 Genero License

The Genero project⁵⁵ is an effort to establish an ecosystem for production, reproduction and distribution of creative works with free licenses. It is a network of service providers connected to a federated registry that registers all free culture worldwide. The Genero license consists of a commercial addition to the CC licensing scheme, using the CC+ framework. Instead of providing specific commercial terms, the Genero license is a basic framework that enables any kind of business model. Typical business terms are unit cost and revenue share. The Genero license permits mashups and re-use without prior

53. According to Kleiner, Richard Stallman has made similar statements rejecting the CC.

54. See <http://iang.info/en/license.html>; accessed February 19, 2012, translated from <http://iang.info/fr/license.html>; accessed February 19, 2012; see also <http://iang.info/fr/manifesto.html>; accessed February 19, 2012.

55. See http://p2pfoundation.net/Genero_Initiative; accessed February 19, 2012.

permission, as long as parent works gets a fair share of any revenues.

5.5.4 Common Goods Public License

The Common Goods Public License (CGPL)⁵⁶ claims to be an ethical license based on the copyleft. It includes duties to humanity and the environment.

5.5.5 Business models

Inspired by communist theory, Kleiner (2010) argues that today's Internet and the *Web 2.0* follows a client-server architecture, serving only few large companies who own both infrastructure and content produced by individuals. Thus, the production means are not in the hands of the producers of content⁵⁷, and this is why most producers cannot retrieve monetary value from their works. *Venture Communism* provides a structure for independent producers to share a common stock of productive assets. Ownership in a venture commune can only be earned by labour alone, not land nor capital.

Venture Communism. The Peer Production License provides a business model only for worker-owned businesses or worker owned collectives through *venture communism*. Legally, a venture commune is a firm as a federation of workers' collectives and individual workers. Shares in the venture commune can only be earned by labour. Property necessary for the production is funded by bonds that are handled by certain rules that assure collective ownership.

Collection collective. This business model includes collecting and distributing revenue from works, similar to a collection society⁵⁸; both the IANG and the Genero licenses are suitable for this business model.

5.5.6 User Ownership Approach

Patrick Anderson promotes the *User Ownership Approach*⁵⁹ and Inter-Owner Trade Agreements (IOTA), for which the GNU General Public License is an example. He introduces the *GNU Public Law* that relies upon initial investing owners (developers) of physical or virtual objects. These owners can add a constraint to these aforementioned objects where all profit must be treated as an investment in more physical sources for the future production of the same kind of object. Wages are in this framework costs, i.e., payments for work as arranged between current owners and potential workers. According to Anderson, the GNU Public Law can be seen as a generalisation of the GNU General Public License.

The GNU General Public Law⁶⁰ is a generalisation of the goals of the FSF's GNU General

56. See <http://www.cgpl.org/index.php/the-license.html>; accessed February 20, 2012. The CGPL was published November 20, 2003.

57. Kleiner claims that the producers of content are the working class of the Internet.

58. See http://en.wikipedia.org/wiki/Collection_society; accessed February 20, 2012.

59. See http://p2pfoundation.net/User_Ownership; accessed February 19, 2012.

60. See http://p2pfoundation.net/General_Public_Law; accessed February 19, 2012.

Public License into the realm of the physical, tangible, and material world. It allows the use of an object for any purpose, modifying it by renting or buying the necessary physical sources for that modification, copying it by renting or buying the physical sources needed for that production, and to share it or a copy both as original and modified. All profit gained through the sale of an object needs to be treated as an investment from the user toward more physical sources. The concept also introduces a specific currency, the GNUrho, for this purpose.

5.6 Case Study: Licensing in OpenStreetMap

In this section we look into specific licensing issues in OpenStreetMap (OSM). As outlined in Section 2.3, OpenStreetMap represents a database of geodata, several types of map rendering, and documentation presented on a wiki. According to the OpenStreetMap web pages⁶¹ OpenStreetMap consists of *open data*, currently licensed under the Creative Commons Attribution-ShareAlike 2.0 license (CC-BY-SA). Contributors to OpenStreetMap can also choose to contribute their data into the public domain. The content of the OpenStreetMap Wiki is licensed CC BY-SA.

5.6.1 License Change

There is currently a license change ongoing⁶² for the data in OpenStreetMap from CC BY-SA 2.0 to ODbL 1.0. The reason for this license change is that the CC BY-SA license is not specifically designed for data bases.⁶³ As of May 2010 all new users automatically accept the ODbL license; as of April 17, 2011 there is a mandatory accept or decline on the ODbL license for all users who contribute. In the case of accept this user's data are re-licensed to ODbL, while users who decline are not allowed to contribute any more. Their contributions are now being removed from the data base by the redaction bot. At the same time, anonymous contributions are no longer allowed.

The license change has been heavily disputed by the members of the OpenStreetMap community after it was announced, as can be seen in the OpenStreetMap wiki⁶⁴. In order to evaluate the consequences to change to the ODbL license, a number of typical use cases of OpenStreetMap data⁶⁵ has been prepared, which have been analysed by OSMF-members with legal expertise.

The cleaning process of the redaction bot has the task to remove all contributions of non-agreers of the new license, i.e., anonymous users, decliners, or users not respond-

61. See www.openstreetmap.org/copyright; accessed August 18, 2011.

62. As of summer 2012, the announced license change has not been performed, and the OpenStreetMap data still are licensed CC BY-SA. However, at the time of writing in July 2012, the license change is about to be performed; the specially designed *OSMF Redaction Bot* is cleaning the data set by deleting or hiding all data where the originators have not acknowledged the new license.

63. See http://www.osmfoundation.org/wiki/License/Why_CC_BY-SA_is_Unsuitable; accessed July 23, 2012.

64. See wiki.openstreetmap.org/wiki/Open_Data_License/Why_You_Should_Decline; accessed August 18, 2011.

65. See wiki.openstreetmap.org/wiki/Open_Data_License/Use_Cases; accessed August 18, 2011.

ing. Ahead of the license change the community requested all participants to accept the new license⁶⁶, which had considerable success; additionally, the community invited contributors to start with re-mapping. To remove all data by non-agreers, the history of each object was used in order to decide whether this object was tainted by non-agreers. Objects created by non-agreers were to be removed, while attributes of objects modified by non-agreers are hidden, and possibly replaced by values set by agreers. There has been a debate what to do with deletions by non-agreers; it has been decided that deletions by definition are not tainted since this would create a paradox.⁶⁷

After the redaction bot did its work, larger areas have been inconsistent; many contributions, also of participants accepting the new license have been deleted since these built upon data previously edited by participants who declined the license change. Therefore, several frequent contributors mentioned the redaction bot with less flattering words in their check-in messages when repairing areas redacted by the redaction bot.

Even though the percentage of data to be deleted⁶⁸, right after the redaction process, many areas which have been complete rather early now suffer from severe data loss.⁶⁹. It is an observation that the redaction process is perceived by the members as a natural disaster, and in many areas with severe data loss the communities use programs and tools designed for disaster-mapping by the Humanitarian OpenStreetMap Team⁷⁰.

5.6.2 Use of OpenStreetMap Data

In OpenStreetMap one distinguishes between data that are licensed, i.e., the content of the database, and the produced work, i.e., renderings of the data into maps. It was intended that there should be no license restriction on produced work other than not allowing reverse-engineering from produced works, i.e., creating a database from produced work. However, the release v1.0 of the ODbL did not approve this. Note that when publishing produced works, notice must be given that makes the user aware of where to obtain the database(s) the work is produced from.

In the comments to the above mentioned use cases several issues regarding derived, collective, and produced work are discussed. Overlaying maps with information from other databases or sources are considered collective work, but require the notice from where to obtain the database. However, when overlaying with confidential data it must be considered whether private or public use is applicable. When mashing up data, it must be considered whether the outcome is derived work or collective work. Here, community guidelines are required. Note that screen shots of produced work in most cases are con-

66. See http://wiki.openstreetmap.org/wiki/Asking_users_to_accept_the_ODbL; accessed July 23, 2012.

67. See http://wiki.openstreetmap.org/wiki/Open_Data_License/What_is_clean%3F; accessed July 23, 2012.

68. Some mailing lists mention about 1% of the total volume to be tainted.

69. One example is the Kristiansand area where most contributions come from one member who did not agree. This member was, in fact, excluded due to a possible license breach, and the community around Kristiansand decided it was better to re-map the entire area without the tainted data.

70. See hot.openstreetmap.org; accessed July 23, 2012.

sidered fair use.

Encrypted databases, e.g., for use in games, are allowed as long as the derivative database also is offered unencrypted. Providing the OpenStreetMap data in a proprietary format is allowed as long as also a non-proprietary version of the same data is offered. Using OpenStreetMap data to fill up gaps in a proprietary data base in a commercial product without contributing these data is not allowed. Also frequent non-substantial extracts are considered a breach of the license.

References

- Høring - Norsk Lisens for Offentlige Data (NLOD), Høringsuttalelser. collection, web, 2011. URL <http://www.regjeringen.no/nb/dep/fad/dok/horinger/horingsdokumenter/2011/horing-nlod/horingsuttalelser.html?id=640253>. accessed February 19, 2012.
- Habtamu Abie. *Distributed Digital Rights Management: Frameworks, Processes, Procedures and Algorithms*. VDM Verlag, October 2009. ISBN 3639202961.
- John R. Ackermann. Toward open source hardware. *Dayton L. Rev.* 183, 34(2):183–222, 2009.
- Dave Beckett and Brian McBride. RDF/XML syntax specification. W3C recommendation, W3C, February 2004. URL <http://www.w3.org/TR/REC-rdf-syntax/>.
- Yochai Benkler. *The Wealth of Networks*. Yale University Press, October 2007. ISBN 0300125771, 9780300125771.
- Ian S. Burnett, Fernando Pereira, Rik Van de Walle, and Rob Koenen, editors. *The MPEG-21 Book*. John Wiley & Sons, 2006. ISBN 0-47001011-8.
- Karen Coyle. Rights expression languages. Report, Library of Congress, February 2004. URL www.loc.gov/standards/relreport.pdf.
- Edy Ferreira and Stoyan Tanev. How companies make money through involvement in open source hardware projects. *Open Source Business Resource*, Commercialization, February 2009. URL <http://www.osbr.ca/ojs/index.php/osbr/article/view/827/800>. accessed February 1, 2012.
- Cheryl Foong. Sharing with Creative Commons : a business model for content creators. *Platform : Journal of Media and Communication*, Creative Commons Special Edition:64–93, December 2010. ISSN 1836-5132.
- Seth Godin. Permission marketing. Seth Godin's blog, January 31 2008. URL http://sethgodin.typepad.com/seths_blog/2008/01/permission-mark.html. accessed January 27, 2012.
- Roberto García González. *A Semantic Web approach to Digital Rights Management*. PhD thesis, Universitat Pompeu Fabra, Barcelona, November 2005. URL rhizomik.net/html/~roberto/thesis/. Section 5: Rights Expression Languages.

- Renato Iannella. Open Digital Rights Language (ODRL), version 1.1. W3c note, World Wide Web Consortium, 2002. URL <http://www.w3.org/TR/odr1>.
- Renato Iannella. ODRL creative commons profile. W3c draft specification, World Wide Web Consortium, June 2005. URL <http://odr1.net/Profiles/CC/SPEC.html>.
- ISO. ISO/IEC 15938-5: 2003. information technology – multimedia framework (MPEG-21) Part 5: Rights Expression Language. International Organization for Standardization, 2004.
- Dmytri Kleiner. The Telekommunist Manifesto. Network Notebooks 03, Institute of Network Cultures, Amsterdam, 2010.
- Sverre Andreas Lunde-Danbolt. En klausulbuffet av vilkår. Fornyingsdepartementets blogg om viderebruk av offentlige data, august 2010. URL <http://data.norge.no/blogg/2010/08/en-klausulbuffet-av-vilkar/>. in Norwegian.
- Sverre Andreas Lunde-Danbolt. Norsk lisens for offentlige data (NLOD) skal på høring. Fornyingsdepartementets blogg om viderebruk av offentlige data, march 2011. URL <http://data.norge.no/blogg/2011/03/norsk-lisens-for-offentlige-data-nlod-skal-pa-horing/>. in Norwegian.
- John Magyar and Dmytri Kleiner. Peer production license: A model for copyfarleft. In Dmytri Kleiner, editor, *The Telekommunist Manifesto*, number 03 in Network Notebooks. Institute of Network Cultures, Amsterdam, 2010. ISBN 978-90-816021-2-9.
- Jason Mazzone. Copyfraud. *New York University Law Review*, 81:1026–1100, 2006. Brooklyn Law School, Legal Studies Paper No. 40.
- Patrick McNamara. Open hardware. *Open Source Business Resource*, Defining Open Source, September 2007. URL <http://www.osbr.ca/ojs/index.php/osbr/article/view/379/340>. accessed February 1, 2012.
- Massimo Menichinelli. Business models for open hardware. [openp2pdesign.org](http://www.openp2pdesign.org), March 16 2011. URL <http://www.openp2pdesign.org/2011/open-design/business-models-for-open-hardware/>. accessed January 30, 2012.
- Paul Miller, Rob Styles, and Tom Heath. Open data commons, a license for open data. *Proc. LDOW2008, April 22, 2008, Beijing, China*, April 2008. URL <http://events.linkeddata.org/ldow2008/papers/08-miller-styles-open-data-commons.pdf>.
- Ryan Paul. TAPR introduces open-source hardware license, OSI skeptical. blog post, 2007. URL arstechnica.com/old/content/2007/02/8911.ars. accessed August 23, 2011.
- Eric Prud'hommeaux and Andy Seaborne. SPARQL query language for RDF. W3C recommendation, W3C, January 2008. URL <http://www.w3.org/TR/rdf-sparql-query/>.

- Petter Reinholdtsen. Noen som kan forbedre kommunegrensen mellom Nøtterøy og Tønsberg? email to kart@nuug.no, August 21, 2011. URL <http://lists.nuug.no/pipermail/kart/2011-August/002948.html>. in Norwegian.
- Eva Rodríguez and Jaime Delgado. Towards the interoperability between MPEG-21 REL and Creative Commons Licenses. In *AXMEDIS'06*, pages 45–52, 2006.
- Mohamed A. Salem and Jamil I. Khatib. An introduction to open-source hardware development. *EETimes News & Analysis*, 2004. URL <http://eetimes.com/electronics-news/4155052/>. accessed February 1, 2012.
- Clay Shirky. Help, the price of information has fallen and it can't get up. *Clay Shirky's Writings About the Internet*. URL http://www.shirky.com/writings/information_price.html. accessed January 27, 2012.
- Jens Stoltenberg, Kristin Halvorsen, Liv Signe Navarsete, Helga Pedersen, Audun Lysbakken, Lars Peder Brekk, Raymond Johansen, Bård Vegar Solhjell, and Trygve Slagsvold Vedum. Political platform as basis for the government's work formed by the labour party, socialists left party and centre party, 2009–2013. *Government Declaration, 2009*. URL <http://www.regjeringen.no/upload/SMK/Vedlegg/Rapporter/Plattform-sm2-a4-web-english.pdf>.
- Yulia Tammisto and Juho Lindman. Open data business models. In *proc. IRIS34, The 34th Information Systems Research Seminar in Scandinavia*. Turku School of Economics, August 16-19 2011.
- Prodromos Tsiavos. Discussing licensing problems. personal communication, August 18 2011.
- Luis Villa. evaluating a Free/Open Service Definition (rough draft). blog post, July 2007. URL tieguy.org/blog/2007/22/. last accessed: August 15, 2011.

6 Openness of Norwegian Public Data



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adapted to compendium by Wolfgang Leister

Public institutions produce and maintain huge amounts of data. In Norway, these institutions are entirely or partially funded by the tax money paid by Norwegian citizens. Therefore, it would be fair that the tax payers could get a hold of these data. In this chapter, we investigate the status of publicly funded data in Norway. Specifically, we investigate three data producers: The Norwegian Meteorological Institute, The Norwegian Mapping Authority and Trafikanten.

How accessible are these data to the general public, and under what conditions? Along with the study of the institutions we will explore examples how their data is being used. Finally, we are going to discuss to what degree publicly funded data should be open.

In this chapter, we use the term *open data* as defined by the Advisory Council of Open Definition: “A piece of content or data is open if anyone is free to use, reuse, and redistribute it – subject only, at most, to the requirement to attribute and/or share-alike”¹.

An important step towards openness of public data in Norway was the creation of the Norwegian Licence for Open Government Data (NLOD). In 2011, the Ministry of Government Administration, Reform and Church Affairs sent a draft version of this new license to a formal hearing in the Norwegian Parliament (Fornyings-, administrasjons- og kirke departementet, 2011). The license was approved in December 2011 and recommended to all government agencies in Norway to use when they publish data (Direktoratet for forvaltning og IKT, 2011). We think this shows the government’s intent to become more open.

NLOD is specifically designed to be compatible with the Open Government Licence, all current versions of the Creative Commons Attribution licences, and Open Data Commons Attribution Licence (v 1.0). This means that material published under NLOD is free to use even for commercial purposes as long as the authors or licensors are credited.

6.1 Meteorological Data

The Norwegian Meteorological Institute (NMI, Norwegian: *Meteorologisk institutt*) is the official Norwegian institute for meteorological services. They are subject to the Norwegian Ministry of Education and Research².

1. See Open Definition at <http://opendefinition.org>; accessed November 19, 2012.
2. See http://no.wikipedia.org/wiki/Meteorologisk_institutt; accessed July 27, 2013.

On their official website, the NMI formulates their mission as follows³:

The institute provides the public with meteorological services for both civil and military purposes. The institute is to provide services for the authorities, commerce and industry, institutions and the general public for the protection of their interests, for the protection of life and property, for planning and for the protection of the environment.

Further, they claim to be aiming for excellence in their field, and that the results of their work should be available for the Norwegian society's benefit. This section will focus on the NMI's primary tasks – broadcasting of weather data.

6.1.1 yr.no

The website yr.no was launched in 2007, as a collaboration between NMI and the Norwegian Broadcasting Corporation (NRK). As of 2012, it is the largest online weather service in Norway⁴. Weather forecasts for more than nine million places in Norway are provided for free through this web service. But, under what terms can you take use of this data?

The NMI has put all of their own data under a NLOD/CC-BY dual-license⁵. Weather data from yr.no seem to be an exception from this practice, as no specific license is mentioned, but rather a list of permissions and conditions. In short, the terms are similar in spirit to those of CC-BY-ND, in that they permit unaltered redistribution (even commercially), but demands attribution (yr.no, 2012c). Since these cannot be altered, this data cannot be considered "open data" according to the previously given definition of open data.

Additionally, there are some further restrictions on how you are allowed to use the data, and how often you are allowed to access fresh copies of the data. For example, you are not allowed to incorporate the data into websites that are contrary to Norwegian law (yr.no, 2012c). Note, however, that such requirements are, legally, not necessary since websites that are contrary to the Norwegian law are not allowed within the Norwegian jurisdiction.

On the technical side, yr.no offers several different options for application developers to take use of their data. Amongst the options are pure weather data streams in the open XML format (yr.no, 2012d), and ready-made PHP- or JavaScript-widgets that developers are free to include in their own web applications (yr.no, 2012a,b).

6.1.2 Other NMI services

Historical climate and weather data are provided through NMI's eKlima interface⁶. The database contains complete weather measurements as far back as 1957. Some of the data trails to the 1860s, but this data is not yet completely digitised⁷. Other services include

3. See http://met.no/English/About_us/; accessed July 27, 2013.

4. See <http://om.yr.no/info/fakta/>; accessed July 27, 2013.

5. See http://met.no/Tilgang+til+data.b7C_w7HSXC.ips; accessed July 27, 2013.

6. See http://sharki.oslo.dnmi.no/portal/page?_pageid=73,39035,73_39049&_dad=portal&_schema=PORTAL; accessed Jul 29, 2013.

7. See http://sharki.oslo.dnmi.no/Help/start/start_en.html; accessed Jul 29, 2013.

access to raw data from arctic, sea ice and wind wave measurements⁸. All of this data is provided free of charge and is offered under a NLOD/CC-BY dual-license.

NMI does also maintain some FOSS tools that are licensed under some flavour of the GNU General Public License⁹. Examples of these tools includes a program for production of meteorological visualisations¹⁰, and a database system for meteorological data storage¹¹.

6.1.3 Applications for Meteorological Data

yr.no maintains a list of applications that make use of their open weather data. As of November 2012, two of them are for the Linux platform, two of them are for Android, one is for Windows and one is platform independent¹². Four of these are, however, proprietary software with price tags ranging from 5 to 15 NOK. The Windows application is offered free of charge, but is still proprietary. Both of the Android applications use the freemium model, which means that the “premium” version must be paid for, while the free versions may contain advertisements.

Among the three FOSS applications, two of them are licensed under the GNU General Public License. The third one is licensed under an unusual FOSS license, WTFPL, which is in essence similar to submitting your work into the public domain¹³. Quite interestingly, the WTFPL is approved by the FSF as a free software license, but was rejected by the Open Source Initiative as an Open Source license on the grounds of being too similar to the public domain (Free Software Foundation, 2012; Open Source Initiative, 2009).

Bjørn Stensrud, the author of one of the Android applications, informed us by email that he is very satisfied with the services offered by yr.no. Though he could wish for more built-in functionality, such as being able to look up weather data by coordinates instead of location names, he does praise the services’ high stability and fast response times. He also mentions that the quality of NMI’s weather data is regarded as world-class. Even though he sells copies of the applications, and gets advertisement income from the free version, his revenue so far has been modest (about 1.000 NOK).

As a side-note, there is a weather plugin for GNU Emacs using the open data API from the Norwegian Meteorological Institute. GNU Emacs is a text editor (though it is sometimes described as a complete operating system) created by Richard Stallman for the GNU project¹⁴. The weather package is, like Emacs itself, licensed under the GNU General Public License. It lets you display a local weather forecast inside the text editor, and it is careful in attributing the data to the NMI, as the CC-BY license requires (Sonderfeld, 2012).

8. See http://met.no/Hav_og_is/Tilgang_til_data/; accessed Jul 29, 2013.

9. See http://met.no/0m_oss/Tjenester/; accessed Jul 29, 2013.

10. See <https://diana.wiki.met.no/doku.php>; accessed Jul 29, 2013.

11. See <https://wdb.wiki.met.no/doku.php>; accessed Jul 29, 2013.

12. See <http://tillegg.yr.no/>; accessed July 27, 2013.

13. See <http://en.wikipedia.org/wiki/WTFPL>; accessed July 27, 2013.

14. See http://en.wikipedia.org/wiki/GNU_Emacs; accessed July 27, 2013.

6.2 Geographical Data

The Norwegian Mapping Authority (NMA, Norwegian: *Statens Kartverk; Kartverket*) is a public agency under the Norwegian Ministry of the Environment, and works as the national mapping authority in Norway. Founded in 1773, the agency provides and administers geographical information for the whole country and its coasts and territorial waters¹⁵. The NMA also keeps, among many other things, historical maps collected since the early days of the organisation, as well as photographs and aerial photographs dating back to 1937.

With a total of 871 employees as of 2012 (Norwegian Social Science Data Services, 2012), the NMA is a rather complex organisation. Besides being the mapping authority in Norway, it has several other defined tasks. We are however mostly interested in their maps as these seem to be the most noticeable and tangible results of the agency's work. Also, these immediately strike us as the most useful and potentially beneficial to the public.

Out of the public institutions we have looked into, the NMA – with their policies on sharing of data – has been the most frequent subject to discussions; traditionally the agency has been conservative with sharing their maps to the public. Among others, Internet pioneer Håkon Wium Lie has been a firm criticiser of the NMA. In 2008 he shared his thought on the matter, that the maritime map data was too expensive (Noer, 2008).

However, much has happened in this field the last couple of years. In the following section we establish some facts and observations about the agency itself, as well as some political factors.

The NMA is divided into many subdivisions spread around the country that contribute to the common database. These subdivisions may have slightly differently defined tasks and work under different rules and jurisdictions. For instance, even though the NMA is supposed to be the mapping authority for the entire country's territories, the maps in the polar regions¹⁶ are maintained and sold separately by The Norwegian Polar Institute. It also seems that due to organisational reasons there are different owners for the rights of the data¹⁷.

Norway Digital

In 2003, the initiative Norway Digital¹⁸ (Norwegian: *Norge digitalt*) was proposed by the Norwegian Ministry of the Environment and installed by the Norwegian government in 2005. Norway Digital is an effort to “build the national geographical infrastructure”, which is supposed to ease the maintenance and distribution of geographical data. The NMA was given the role as coordinator of the project. Today, a wide range of institutions has joined, as well as all the municipalities in the country, except for Oslo.

15. See <http://www.kartverket.no/en/about-the-norwegian-mapping-authority/>; accessed July 28, 2013.

16. See <http://www.npolar.no/en/services/maps/>; accessed July 27, 2013.

17. See <http://www.statkart.no/Kart/Kartverksted/Visningstjenester/>; accessed July 27, 2013.

18. See <http://norgedigitalt.no>; accessed July 27, 2013.

In the parliamentary proposition about *Norway Digital* (Miljøverndepartement, 2003), the Ministry of the Environment acknowledged that access to public data is important, also for commercial purposes:

Commercial exploitation of public data is important for increased generation of value in the information society.¹⁹

6.2.1 Need for reliable providers

The NMA has produced and sold maps ever since it was founded. Traditionally, these were “analogue” maps printed on paper. At the advent of the Internet era, the agency has faced more competition and challenges.

For instance, Google, Inc. is a well known actor in the market which has been offering free map solutions for some time. Many web sites and mobile applications worldwide have taken advantage of Google Maps. Lately though, Google changed its terms of use. Developers could suddenly find that their use of the service now fell under the “Maps API for Business” model and that they either needed to pay Google or scale down the usage (Google Developers, 2012).

Being a business company, Google may do as it pleases with its products. It is to an extent understandable that Google wishes for a better return from the effort given into the collection and maintaining of the data. However, this also shows that licensing terms can change out of the data owner’s commercial interest.

We also believe in the importance of stable and reliable providers of such public data. It is clearly in the developers’ interest to be able to use public information without having to consider that the terms of this use may change.

6.2.2 Freedom of Information and Spatial Data Acts

“Access to reliable geographical information is necessary for making good decisions in many areas of the society”²⁰, said the Minister of the Environment Erik Solheim in 2010 when *The Spatial Data Act* (Norwegian: *geodataloven*) was approved (of the Environment, 2010). The aim of the new act was to ensure better access to public geographical information (spatial data) for both public and private purposes (Lovdata, 2010).

The new law came after a renewal of the Freedom of Information Act²¹ (Norwegian: *Offentlighetslova*) in 2009 which forces the Norwegian Mapping Authority to dissolve the monopoly under which its data was provided. The NMA has changed its policy accordingly, but the data is still not *free*; even though public data is supposed to be free according to the Freedom of Information Act, the NMA claims the right to charge for it in order to cover its expenses and even make “a reasonable profit” on the investment.²²

19. Translated from Stortingsmelding No. 30 by Miljøverndepartement (2003, p. 7).

20. translated.

21. literally translated: *Act relating to public access to documents in the public administration*. See <http://www.lovdata.no/all/n1-20060519-016.html>; accessed August 14, 2013.

22. The document where this was stated is no longer available after a re-organisation of the web site www.statkart.no. Lately, the policy of the NMA has changed towards more openness.

6.2.3 Policy

The NMA is one of the country's agencies under public administration (Norwegian: *Forvaltningsbedrift*). This means that it is more or less run like an ordinary business, trying to generate a profit.

Rather than selling it directly, the Authority distributes its digital data through a short list of authorised dealers. This means that users may not get the data directly, but have to go through other commercial actors. These actors are businesses that wish to generate value by offering geographical solutions to others.

It seems that NMA's policies have changed back and forth at times, and it has been quite hard to put together a fully detailed time-line over the agency. Some press releases contradict each other, and the agency's structure seem somewhat unclear. Complete or partial privatisation of the agency has been a topic in the Storting (Stortinget, 2003).

6.2.4 Free services and release of data

Despite keeping a commercial profile, the NMA offers some services freely to the public. *Norgeskart*²³ is a website where users can interactively explore a fully detailed map over Norway free of charge. There are advanced features like tools to measure distances and retrieving elevation profiles from lines that the user can draw on the map. For any given point in the map, the website can retrieve weather information from yr.no.

In 2009, the NMA announced the release of their map data to the public (Kartverket, 2009). Through the Web Map Service (WMS) specification²⁴, developers may freely integrate NMA's maps into their apps or websites²⁵. There are plenty of options and opportunities that should cover most developers' needs, but the service is quite restricted by an explicit non-commercial terms-of-use clause²⁶.

Also, the datasets *N2000* and *N5000* have been openly released under the Creative Commons BY license²⁷. These datasets contain geographical data of the whole of Norway with a resolution of 2000 and 5000 m, respectively. Therefore, these are merely usable for rough illustrations.

6.2.5 Applications of Geographical Information

There are merely no limits to what a map can be used for. In Apple's *App Store* for iPhone the category "Navigation" seems to be one of the most popular. Here we find the Norwegian app *NaVida*, which was the first one to use the free WMS interface from the NMA²⁸. The application works splendidly, but due to the restriction imposed on the data by the NMA, the app forcefully deletes all data stored locally after 14 days.

23. See <http://norgeskart.no>; accessed July 27, 2013.

24. See http://en.wikipedia.org/wiki/Web_Map_Service; accessed July 28, 2013.

25. See <http://www.kartverket.no/Kart/Kartverksted/Visningstjenester/WMS-tjenester/>; accessed July 28, 2013.

26. See <http://www.kartverket.no/Kart/Kartverksted/Visningstjenester>; accessed July 28, 2013.

27. See <http://www.statkart.no/kart/kartverksted/last-ned-illustrasjonskart/>; accessed July 28, 2013.

28. The developer of *NaVida* can be found at <http://www.ecc.no>; accessed July 27, 2013.

6.2.6 Association for the Promotion of Skiing

The Association for the Promotion of Skiing (Norwegian: *Foreningen til Ski-idrettens Fremme* or *Skiforeningen*; hereafter: *Skiforeningen*) is a large associational operating mainly in the eastern part of Norway. The association has 65 000 members and arranges a large number of activities related primarily to skiing but also hiking and bicycling. It's estimated that 1.2 million people benefit from Skiforeningen's work²⁹.

Skiforeningen was a relatively early adopter of the Internet, being on-line already in 1993. This work has been almost exclusively attributed to Steinar Kjærnsrød, regarded as a Norwegian Internet pioneer. He has offered his services to Skiforeningen for 30 years without charging for it (Manshaus, 2009). One of his projects is *Markadatabasen*, a large database containing updated information about the ski tracks prepared by Skiforeningen, opening hours of Skiforeningen's many cabins, trip advises, web cameras, photos, weather forecasts (provided by yr.no) and much more. All these data are ultimately connected by maps provided by the NMA.

As a supplement to *Markadatabasen*, Skiforeningen has recently introduced a new trip planner. It is currently open for everyone, but Skiforeningen plans to make it exclusive to its members in the future while *Markadatabasen* will remain open for everyone.³⁰

Noticing that the new trip planner is partly developed by *Geodata AS*³¹, one of the NMA's authorised distributors, we contacted Skiforeningen and Kjærnsrød to find out how much Skiforeningen payed Geodata for their services. We were told that the total sum Skiforeningen paid to Geodata in 2012 was NOK 200 000.

In a follow-up question Kjærnsrød couldn't tell us precisely how much of this sum that was for the access to the Mapping Authority's services, but we were surprised to hear his estimate. According to Kjærnsrød, Geodata had done significant work to develop the service and 70–90% of the cost were probably man-hours. Furthermore, he stated that even though he is a huge supporter of open public data, one should not forget that the NMA a couple of years back was instructed to operate in a more commercial manner by the parliament (see Stortinget, 2003); thus it is in a sense "you and me" that have staked out NMA's current path.

6.3 Public Transport in Oslo

Trafikanten is a company now entirely owned by Ruter³², the company in charge of administering most of the public transport in the Oslo and Akershus region. The funding comes partially from Oslo Municipality and Akershus County Council and partially from ticket sales from the public transport (Oslo Kommune, 2011). They maintain data like timetables, real-time arrival information and deviations in schedules. As the data is offered under the NLOD license, commercial re-use is allowed. Developers expecting large

29. See <http://no.wikipedia.org/wiki/Skiforeningen>; accessed July 27, 2013.

30. See http://www.skiforeningen.no/medlem2/medlemsaktuelt/ny_unik_turplanlegger; accessed July 27, 2013.

31. See <http://www.geodata.no/>; accessed July 28, 2013.

32. See <https://ruter.no/no/0m-Ruter/0m-Trafikanten/>; accessed July 28, 2013.

amount of traffic to their services must however contact Trafikanten for approval; this is stated to be for practical reasons only³³.

To get detailed insight into the kind of services they are offering application developers, we had to file a registry³⁴. One day later, we received instructions on how to make use of the data, and it does indeed seem to work well. The data itself are offered in the convenient JSON format³⁵, which is an open standard typically used for data exchange over the Internet. For example, a query for the station “Blindern T-bane” returns (among others) information about the its zone, its district, and its exact coordinates. Similarly, real-time information about the current traffic situation is readily available, such as deviations from the planned timetable.

Trafikanten does not offer free support for developers wanting to use their data. To get their support, a special deal has to be made with Trafikanten (Warren, 2011).

6.3.1 Applications of Public Transport Data

There exists a plethora of applications taking advantage of the open data published by Trafikanten. One example is Trafikanten’s official Android and iOS application, *Ruter-Reise*. It is among Norway’s most popular Android applications (Aagaard, 2012), with between 100,000 and 500,000 installations from Google play (codebox.no, 2012). It is developed by the private company *codebox*, and licensed under the GNU General Public License³⁶, disproving the common misconception that there need to be a conflict between FOSS licensing and commercially supported software.

PING,³⁷ a student organisation at the University of Oslo, focuses on network technology, hardware and free software, has also been taking advantage of the open data provided by Trafikanten. One of the machines in their lab is dedicated to showing a real-time timetable of the public transport arrival times at stations close to the lab. The software running on this machine is licensed under the ISC FOSS license³⁸ (Stensgård, 2011).

In September 2012, the Norwegian Broadcasting Corporation (NRK) announced that they, in cooperation with Trafikanten, Ruter and the Norwegian Public Roads Administration (Norwegian: *Statens vegvesen*), will develop what they describe as “Norway’s most complete traffic service” (Eriksen and Brattli Vold, 2012). This new service is supposed to provide one centralised portal for public transport information, route planning, and real-time traffic information including travel by bus, boat, subway, tram, car, train, and aeroplane. The open data provided by the Norwegian Public Roads Administration makes it possible to take unforeseen real-time information about hindrances such as accidents or winter-closed roads into account when planning a route.

33. See <http://labs.trafikanten.no/aapne-data.aspx>; accessed July 28, 2013.

34. The address <https://web.questback.com/trafikantenas/nlod11/> was used for the registration. This address seems to be no longer in use, and the “quest” is now terminated.

35. See <http://en.wikipedia.org/wiki/Json>; accessed July 28, 2013.

36. See <http://www.codebox.no/prosjekter>; accessed July 28, 2013.

37. See <http://www.ping.uio.no/>; accessed July 28, 2013.

38. See http://en.wikipedia.org/wiki/ISC_license; accessed July 28, 2013.

NRK's initiative has sprouted some controversy. Both the Norwegian Media Authority (Norwegian: Medietilsynet), the Norwegian Media Businesses' Association and TV 2, Norway's largest commercial TV channel³⁹, has expressed concerns about NRK's newly planned service. They fear that the service will be of hindrance for further innovation in the field. NRK claims that the service will be completely non-commercial, and that the data will be released freely for anyone to use, including commercial actors. NRK emphasises that this kind of service will be of huge value to the general public (Eriksen and Brattli Vold, 2012).

We feel that this initiative is a big step in the right direction for the utilisation of public data. When we look at the success of yr.no, the Norwegian Meteorological Institute- and NRK's joint effort, our expectations for this new project are accordingly high.

6.4 Should Public Data be Open?

We have seen examples that speak in favour of opening up public data. Innovative services such as yr.no and RuterReise are clearly of benefit to the general public. But can the case of open data be supported by other lines of reasoning?

6.4.1 Why Public Data Should Be Open Data?

Håkon Wium Lie (2009) poses an economical argument as the main reason for the government to release publicly founded data as open data. He argues on the grounds of "fairness": when we, as taxpayers, collectively fund the production of some data, it is simply fair that this data is given back to us. Wium Lie draws the NMA's sea charts as an example: The production of the charts are largely funded by tax money (94% in 2005). Still, customers have to pay around 10.000 NOK to acquire electronic copies of these charts. Wium Lie suggests that the citizens are charged twice – once through tax, and once through direct payment.

We have seen that generally public data has become more open in the course of the last few years, but for instance, the NMA remains somewhat closed. Steinar Kjærnsrød raised an important issue, namely that the NMA has to follow orders from the parliament, which has decided that the agency should operate more commercially.

Any commercial actor that wants to exploit the NMA's data must pay a fee to become an authorised distributor, and all these distributors compete on equal terms. However, in the list of distributors we only counted 15 companies. These seem to be large companies or specialised map producers. Seemingly, there is not much room for hobbyists or semi-professionals – these will have to resort to the free, restricted services.

As a commercial business NMA cannot give away all its products for free while the parliament expects a revenue. Whether or not the parliament has made the right decision in this matter needs to be seen.

39. See [http://en.wikipedia.org/wiki/TV_2_\(Norway\)](http://en.wikipedia.org/wiki/TV_2_(Norway)); accessed July 28, 2013.

6.4.2 Why Public Data Should Not Be Open Data?

We need to discuss whether there are cases when the public benefits of keeping the data closed might be higher than making them open. According to Wium Lie (2009), privacy and national security should always trump the benefits that might come with the opening of public data. Some examples of where this could be the case are health care records, school grades, or the King's travel plans.

We agree with Wium Lie in such "obvious" cases; public access to people's health care records would be a serious violation of privacy, even though technically, the public has paid for the production of those data too.

We need to consider cases that are borderline in our opinion. One such instance is Skoolgate (Westvang, 2010), a web-site visualising the results from national tests in Norwegian elementary schools. Whether or not such national tests should be performed at all is beyond the scope of this chapter. Though, we feel that once the government has decided to conduct such tests, these should not be kept a secret. Further, we agree with the author of Skoolgate in that making the results visible to the public will help fostering the debate on whether such tests should be performed at all.

Another borderline case is a web-service run by a Maryland newspaper, The Baltimore Sun (Baltimore Sun Media Group, 2012). Their web-service lets you explore the history of homicides made in Baltimore since 2007. It includes the time and place of the murder, but also the cause of death. In addition, detailed information about the victim is made public, including their full name, age, gender and race. This case is beyond what we would consider beneficial to the citizens. While, for example, historical information about locations of crime scenes in Norway could be interesting in its own right, and indeed useful, we feel that releasing personal information about victims does not serve any purpose, and could also be a breach of privacy or similar rights.

6.5 Concluding remarks

In this chapter, we scratched the surface of a huge topic. The debate on openness of public data is currently intense in Norway as can be observed through Norwegian news sites (Eriksen and Brattli Vold, 2012; Jørgenrud, 2009; Øvrebo, 2012; Solstad, 2009; Tveit, 2012). Several political parties have discussed the openness of public data in their programmes.

The awareness of these issues grows outside of Norway, too. In mid 2012, an open data initiative was started in the UK, called the *Open Data Institute*⁴⁰. Co-directed by WWW-inventor Tim Berners-Lee, their vision is to help nurture innovation regarding the use of open data. The ODI receives funding from public bodies (see, e.g., Government Computing, 2012).

As of our hopes for the years to come, we will borrow the words of Håkon (Wium Lie, 2009): *Hopefully, the resistance to opening of public data is only convulsions from the last century that will eventually disappear by itself over time.*

40. See <http://theodi.org/faq>; accessed July 28, 2013.

References

- Anders Aagaard. Ruter android, 2012. URL <https://github.com/andaag/ruterandroid/blob/master/README.md>.
- Baltimore Sun Media Group. Baltimore homicides, 2012. URL <http://data.baltimoresun.com/homicides/>.
- codebox.no. Ruterreise – android apps on google play, 2012. URL <https://play.google.com/store/apps/details?id=com.neuron.trafikanten>.
- Direktoratet for forvaltning og IKT. Norsk lisens for offentlige data er klar!, 2011. URL <http://data.norge.no/blogg/2011/12/norsk-lisens-offentlige-data-er-klar>.
- Daniel Eriksen and Henrik Brattli Vold. NRK får lage ny nasjonal trafikkportal, 2012. URL <http://www.nrk.no/kultur-og-underholdning/1.8389830>.
- Fornyings-, administrasjons- og kirke departementet. *Høringsnotat – Norsk lisens for offentlige data (NLOD)*. 2011. URL http://www.regjeringen.no/upload/FAD/Vedlegg/IKT-politikk/Horingsnotat_NLOD.pdf.
- Free Software Foundation. Various licenses and comments about them, 2012. URL <http://www.gnu.org/licenses/license-list.html#WTFPL>.
- Google Developers. Google Maps API licensing, November 23 2012. URL <https://developers.google.com/maps/licensing>.
- Government Computing. Government commits £10m to open data institute, 2012. URL <http://www.governmentcomputing.com/news/2012/may/23/open-data-institute-plans-published-cabinet-office>.
- Marius Jørgenrud. Varsler tidenes frislipp av offentlige data, 2009. URL <http://www.digi.no/818132/varsler-tidenes-frislipp-av-offentlige-data>.
- Kartverket. Gratis karttjenester, 2009. URL <http://www.statkart.no/Gratis+karttjenester.d25-SwJfY1-.ips>.
- Lovdata. Lov om infrastruktur for geografisk informasjon (geodataloven), September 3 2010. URL <http://www.lovdata.no/all/h1-20100903-056.html>.
- Erik Manshaus. Oslomarkas skjulte veiviser, 2009. URL <http://www.tv2.no/gmn/oslomarkas-skjulte-veiviser-3016787.html>.
- Det Kongelige Miljøvern departementet. *St.meld. nr. 30 (2002–2003): “Norge digitalt” – et felles fundament for verdiskaping*. May 2003. Available as <http://www.regjeringen.no/Rpub/STM/20022003/030/PDFS/STM200220030030000DDDPDFS.pdf>.
- Lars Karelius Noer. Rådyre kart fra staten, May 28 2008. URL <http://www.nrk.no/helse-forbruk-og-livsstil/1.5824212>.

Norwegian Social Science Data Services. Forvaltningsdatabasen, 2012. URL <http://www.nsd.uib.no/polsys/data/forvaltning/ansatte/etat/14:7>.

Ministry of the Environment. Ny geodatalov gir bedre tilgang til geografisk miljøinformasjon, September 2010. URL <http://www.regjeringen.no/en/dep/md/Whats-new/news/2010/Ny-geodatalov-gir-bedre-tilgang-til-geografisk-miljoinformasjon.html>.

Open Source Initiative. OSI board meeting minutes, wednesday, march 4, 2009, 2009. URL <http://opensource.org/minutes20090304>.

Oslo Kommune. Finansiering, 2011. URL <http://www.byrådsavdeling-for-miljo-og-samferdsel.oslo.kommune.no/kollektivtrafikk/finansiering/>.

Olav Anders Øvrebø. Norge vil åpne bistandsdata (endelig), 2012. URL <http://voxpública.no/2012/10/norge-vil-apne-bistandsdata-endelig/>.

Øyvind Solstad. Data som vi alt har betalt for, 2009. URL <http://nrkbeta.no/2009/07/03/data-som-vi-alt-har-betalt-for/>.

Rüdiger Sonderfeld. weather-metno-el, 2012. URL <https://github.com/ruediger/weather-metno-el>.

Martin Stensgård. Trafikanten realtime departure table, 2011. URL <http://git.ping.uio.no/?p=mastensg/vestli.git>.

Stortinget. Møte onsdag den 18. juni 2003 kl. 10, sak nr. 1: Innstilling fra energi- og miljøkomiteen om norge digitalt – et felles fundament for verdiskaping, 2003. URL <http://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Referater/Stortinget/2002-2003/030618/1/>.

Knut Olav Tveit. Åpne data skal gi norsk vekst, 2012. URL <http://www.mandagmorgen.no/Åpne-data-skal-gi-norsk-vekst>.

Christopher Warren. Hvordan bruke JSON data?, March 22 2011. URL <http://labs.trafikanten.no/2011/3/22/hvordan-bruke-json-data.aspx>.

Even Westvang. Skoolgate, 2010. URL <http://vis.bengler.no/projects/skoolgate>.

Håkon Wium Lie. Offentlig informasjon skal være offentlig, 2009. URL <http://voxpública.no/2009/05/>.

yr.no. Javascript-varsels, 2012a. URL <http://om.yr.no/verdata/javascript/>.

yr.no. Vêrvarsels i php-format, 2012b. URL <http://om.yr.no/verdata/php/>.

yr.no. Vilkår for bruk av gratis data frå yr.no, October, 11 2012c. URL <http://om.yr.no/verdata/vilkar/>.

yr.no. Vêrvarsels i xml-format, 2012d. URL <http://om.yr.no/verdata/xml/>.

7 Extracting Value in the Commons



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This chapter explores how different licensing arrangements may be used to structure the flow of rights and permissions and to produce different types of value. In the open source literature, little consideration has been given to the way the licensing model itself influences the production of value. Licences – viewed as a set of permissions – operate as regulators of the flow of content, data, and software along with technological and organisational arrangements, they allow the production of value for different stakeholders participating in the licensing ecosystem.

We also need to look closer at the concept of value. While most literature has been preoccupied with the concept of value as equivalent with monetary value, this chapter posits that the value produced, especially for public organisations, may not necessarily be of a monetary nature. In addition, the model of value production does not follow a strictly linear, exchange-driven pattern. On the contrary, we gradually move to a more integrated and indirect models of production.

Licenses interface with the existing regulatory framework, as they are the legal instruments that regulate the flow of data, content, and software, and, along with the relevant technological development, make the production of value possible. We also need to consider the different forms of flow that licences produce in order to suggest different models for the management of software, content, and data.

7.1 Value

There is a variety of definitions of the term *value* depending on economic or idealistic interpretations. We can distinguish between *non-monetary value*, such as *a)* cultural dissemination and preservation; *b)* education; *c)* reputation; *d)* quality; *e)* audience creation; *f)* relevance of material; *g)* collective memory; and *h)* sustainability; and *monetary value* that is associated with revenue, sustainability, and conservation of a project, and the ability of securing secure future funding.

Economic or monetary value is a measure of the benefit provided by a good or service to an economic agent. It is generally measured relative to units of currency, and the interpretation is therefore *what is the maximum amount of money a specific actor is willing and able to pay for the good or service?* Even in economics, there are several definitions of the term value, such as the neoclassical economics definition “the value of an object or service is seen as the price it would bring in an open and competitive market.”.

In classical economics, according to the *Labour Theories of Value*, the value of an object or condition is the amount of discomfort or labour saved through the consumption or use of an object or condition. This is based on the assumption that the value of a commodity is only related to the labour needed to produce or obtain that commodity and not to other factors of production. This view is most often associated with Marxian economics (Marx, 1865), although earlier classical researchers presented similar thoughts (Ricardo, 1817; Smith, 1776). Generally, a commodity has four aspects of value: 1) a value in one of the above definitions, 2) a *use-value* or *utility* of consuming a good, 3) an exchange value, and 4) a price, e.g., an actual selling price or an imputed ideal price.

Bauwens (2006) presents his thoughts on the political economy of CBPP and its relation to value. For CBPP to work, five requirements need to be fulfilled: 1) a technological infrastructure that operates on peer-to-peer processes and enables distributed access to 'fixed' capital, e.g., the participants home computers; 2) information and communication systems which allow for autonomous communication between cooperating agents without intermediaries; 3) a software infrastructure for autonomous global cooperation, such as blogs and wikis embedded in social networking software to facilitate the creation of trust and social capital; 4) a legal infrastructure that enables the creation of use-value and protects it from private appropriation; and 5) a cultural change including changes in ways of feeling and being, ways of knowing, and value constellations.

Bauwens cites Fiske (1999) who suggests four fundamental models for organising aspects of sociality most of the time in all cultures: 1) communal sharing, 2) authority ranking, 3) equality matching, and 4) market pricing. CBPP is more communal sharing than equality matching since it is not based on reciprocity. For CBPP, each participant contributes according to his capacities and willingness, and each takes according to his needs. CBPP is most suitable for immaterial goods, where the input is free time and the available surplus of computing and other resources. Equality matching, reciprocity-based schemes and cooperative production are necessary for material goods where the cost of capital intervenes. At present, CBPP offers no general solution to the material survival of its participants.

According to Bauwens, the use-value created by CBPP projects is generated through free cooperation, without coercion towards the producers, and users have free access to the resulting use-value. Following the requirements for CBPP, the legal infrastructure creates information commons that are immaterial, in contrast to the traditional commons. Value exchange can be considered in market terms only in the sense that individuals are free to contribute or take what they need, supported by the infrastructure but without any monetary mechanism. Thus, the commons are not true markets since neither market pricing nor managerial command are required to make decisions regarding the allocation of resources.

When using open licensing arrangements in publicly funded organisations or organisations in the public sector, the creation of value is in most cases of the non-monetary kind. In such organisations, different stakeholders have different perceptions of value,

and the identification of types of value is the first step for achieving any project's objectives (Dyson, 1995). Projects where monetary value is *not* the key value to be achieved can be considered to be useful for an organisation in the future or necessary for sustainability purposes. Yet, the revenue gained from the monetary value of a project in such organisations will contribute to its sustainability.

In an information society, some value can be created by giving access to content, but more value can be created by allowing content to be used, thus, fostering the creation of new content. Aigrain (2006) analyses the structure of a many-to-many commons-based information society with an emphasis on attention and symmetry between reception and creation of content. Aigrain argues that the attention of content in a commons setting follows a different pattern than in a traditional setting, e.g., listening to music. This can have an impact on sustainable business models, such as carrier and service businesses, advertising, direct community financial contribution, indirect fee or tax-based funding.

Aigrain emphasises the balance between the effort to produce and obtain attention of others and the attention given to others. As an extreme, *expressivism* depicts a world in which all would talk but nobody would listen to the others. However, the term *expressivism* is also used more positively, stressing that the individual is not a pre-existing entity but is constituted in the process of expression and exchange with others (Allard, 2005).

For organisations that present content to the public, such as galleries, libraries, archives, and museums (GLAMs), monetary value might be retrieved from entrance fees and fees for services and subscription. When using free licensing arrangements, for digital content the monetary value might be reduced. However, non-monetary values will emerge, as listed above. Additionally, content can be used to create new content and products, thus, paving the way for creativity of users. Especially for public organisations that receive public funding this value is important. Note also that the customers of publicly funded organisations already have paid for the content through their taxes, while there might be willingness to pay for extra services.

Public entities that provide data, such as geodata, meteorologic data, or data from public transport, could retrieve monetary value from usage fees. However, using open licensing could increase the value of the data in the form of reduced costs and more reuse, while the direct income from usage fees will disappear. Thus, considering value creation there must be a balance between different types of values, in-line with the chosen business model.

7.2 Success-Factors for Licensing Arrangements

The art of extracting value out of open licensing scheme requires a good appreciation of the ways in which all the production process, the licensing arrangements, the organisational context, and the regulatory context interplay with each other. Just because the same type of licence is deployed, it does not mean that the same type of value or the same production model is in place.

The support of a specific model of value production is the result of a number of factors, such as: 1) the kind of value that the owner of the development process would like to produce; 2) the kind and potential number of individual contributors; 3) the nature of the artifact to be developed; 4) the maturity of the ecosystem in which the project is to be placed; 5) the regulatory environment; and 6) different mixes of open and closed licensing schemes.

7.2.1 Value Type

The existence of multiple types of non-monetary value types indicates that open licences may be used directly to produce those, and indirectly to produce monetary value, when the latter is part of an organisations' mission. This is particularly the case in public sector organisations that do not necessarily aim at producing monetary value. Here, the number of individuals accessing their collections is very likely to affect their funding and thus increase monetary returns in the future.

In most cases open licensing models are used in order to serve the following direct purposes: 1) increase access to a resource; 2) facilitate the collaborative production of an information product; and 3) produce an audience. These, in turn, may have social, cultural, educational or indirect economic consequences. For instance, digital access to a digital surrogate of a museum item may increase physical access that may require a ticket or increase the sales of material artefact or value added services related to that particular product, such as museum souvenirs or *apps* specifically designed for a unique museum collection. These products or service are normally addressed to a relatively small market but tend to offer bigger profit margins compared to mass marketed products.

Very frequently, the objective of opening up access – specifically allowing either production of derivative works or production of meta-information – is to facilitate the production of a collaborative artifact, or the improvement of a half ready artifact. In that case, it is essential to allow the reuse of the material. The kind of restrictions that will be imposed on the type of reuse are again directly linked to the respective business model.

Another type of opening up access is by allowing reuse not of the primary content but rather of the meta-content such as meta-data and descriptions, mostly user-generated-content that does not directly come from the entity controlling the production platform. In this case, we frequently find a model where the primary content cannot be altered but may be shared, whereas any user generated content is allowed to be reused on standard terms.

All these options, whether sharing or reuse oriented, aim at the production of an audience or a social network built around the dissemination and the production of these information artifacts. Such networks are extremely important as they constitute the driving force behind the production process and may be employed in order to produce subsequent forms of direct or indirect value. For instance, such an audience may be the holder of membership cards in a museum or a pool of experts on a specific subject in Wikipedia.

It is also important to note that the entity that controls the platform is the one that has

the most important role in the open content ecology since it is the one that cultivates the different types of value and drives the process. However, such platform ownership does not entail full ownership of the process, which remains heavily community based. The more open the production process is, both legally (through licensing) and technically (through the use of open standards and formats), the more the community has the ability to replicate the platform somewhere else increases and hence the platform owner becomes more accountable. The degree such platform technologies have become commoditised, and hence may be offered by multiple players or even obtained and managed by the community itself, also defines the way the power balance between platform owner and community is formed.

7.2.2 Kind and Number of Contributors

Because of the nature of CBPP, both the number and skills of the persons or nodes participating in the production is crucial in increasing the viability, quality, and reducing the cost of the production process. This is because the peers need to have excess capacity in order to produce the desired product. Therefore, they have to be diverse and in great numbers enough so that the cost for their individual contributions can be low, or their knowledge level is high enough so that their contributions do not entail substantial costs for them.

The role of the platform owner is to support the enrichment of the pool of contributors both in number and in quality through a number of supportive activities. These may be educational ones (e.g., Wikipedia topic specific seminars) or efforts to buy the time of key community members that could then transfer knowledge through interaction to other members of the community. The latter is a method frequently seen in the case of FOSS where key developers are hired in order to dedicate their time in the development of specific software packages. This supports the development of knowledge within the community and also covers the contribution needs where the CBPP model fails because of the level of required expertise that may not exist in the community. However, such payment of contributors needs to be done with extreme care so as not to alienate the other members of the community, and not to give the signal that some members of the community profit from the work of others.

7.2.3 The Nature of the Artifact

The nature of the artifact leads to different organisational arrangements and production modes even when the same licences are used. It is also a factor that is very frequently ignored or being misinterpreted, as it is not the textual or software nature of the artifact but the way it is structured and enjoyed that makes the difference in the production process. More specifically, we may divide information artifacts to those that are of a single continuous narrative and those that are more modular. The archetype of the former would be a novel or a painting, whereas the archetype of the latter would be a Wikipedia entry. The more the narrative of the artifact cannot be broken down the less it is likely to be used in a collaborative production scenario other than in the case of super distribution, i.e., the direct sharing of the artifact between the audience.

In the same context, we distinguish between artifacts that evolve incrementally (e.g., software or a wiki) and artifacts that constitute distinctive units that are to be re-combined. For incrementally evolving artifacts a number of contributors make incremental changes to the content until it is at a level that makes it usable. Artifacts that constitute distinctive units can be music remix sites where specific libraries of sounds or individual sounds are used in order to produce variations of a piece. There are also hybrid models, such as is the case of geodata and wiki-information mashes.

7.2.4 Ecosystem Maturity

While an open content approach may be desirable for the development of specific types of value, the maturity of the ecosystem to support such activities is also essential for the success of a project. This could mean that an organisation has processes for the clearing of rights, an understanding of its main value goals and the availability of tools and experts for the production of the desired information product.

7.2.5 The Regulatory Environment

Beyond copyright, the regulatory environment includes types of regulation such as Public Sector Information and Geodata Legislation, Freedom of Information Legislation or their variations. Also, data-protection laws are crucial as a number of valuable data sets, especially when including location data, have to be cleared of all personal data before being made openly available.

7.2.6 Licensing Models

The type of licence used is directly related to the desirable value production. It is important not to place unnecessary barriers to access while avoiding access that could cannibalise products of the platform owner. For instance, the Non Commercial element should not be used unless there is a clear understanding of what the commercial uses are and these are clearly communicated to the public. Also, the ShareAlike element is useful particularly in cases where the incremental development of single product, such as a wiki, software or geo-maps, but it is not desirable when you need to maximise reuse from commercial companies or when there are many incompatible ShareAlike licences in a market that effectively make the reuse impossible.

Overall, open licensing models require a sophisticated approach if the maximum amount of value is to be derived but they can be easily applied, especially in the original stages of the development phase provided the aforementioned elements are seriously taken into consideration.

7.3 The Role of Regulatory Instruments

Lessig (2006) introduced the *Pathetic Dot theory*, also denoted as the *New Chicago School theory*, as a socio-economic theory of regulation. It discusses how individuals are constrained by four forces: 1) the law, 2) social norms, 3) the market, and 4) architecture denoting technical infrastructure, environment, and physical facts.

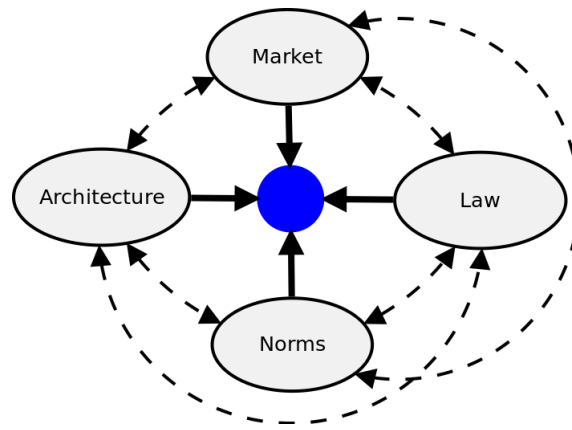


Figure 7.1. Basic diagram of the Pathetic Dot

The pathetic dot theory, illustrated in Figure 7.1, explains the four forces so that the law threatens sanction if not obeyed, and social norms can be enforced by the community. Markets through supply and demand set a price on various items or behaviors. Finally, the (social) architecture, i.e., facts like biology, geography, technology, and others constrain our actions, directly or indirectly, ex ante and ex post. Note also that the four forces can influence each other.

We have seen a trend of regulatory transformation in many areas as a result of the technological changes, especially digital technologies. In the realms of digital content we have seen the impact of these changes in the respects of *a) licensing for content; b) legislative instruments other than copyright and licensing; and c) legal instruments beyond licensing.*

7.3.1 Copyright and Licensing for Content

The licenses for FOSS, as introduced in Section 4.3, constituted the legal incarnation of a set of practices followed for software production. Licenses that regulate content and data, as discussed in Chapter 5, brought the open source principles in the realms of content and data and allowed to employ CBPP principles as soon as the technology made it possible for digital goods to be produced in a suitable way.

Copyright's main objective has been to control access to immaterial goods in order to produce incentives for authors to create more works and content. The limited duration of copyright aims at the return of such works to the public domain, i.e., a space without legal restrictions, where other creators may make use of it in order to produce further new works and content. The advent of digital technologies in the production of the relevant material has, in a sense, intensified the life-cycle of *production – public domain – re-production*. To meet the need for more material to be placed quicker in the public domain a radical reconsideration of copyright law would be required. Since this would not be possible due to limitations coming from international treaties, the *functional or licence-based public domain* was designed, with the help of free and open licences.

7.3.2 Legislative Instruments other than Copyright and Licensing

In terms of substantial law we have seen a number of legislative instruments other than copyright appearing. These aim not to control, but rather to increase access to informational resources. In practice, many of them have appeared as a result of the direct influence of digital production both to the costs of production and the kind of value-added services possible in a digital economy. The cost of digital production and, most importantly, reproduction and dissemination has been and is continuously dropping. A prerequisite to having an economy based on vibrant value-added services is the access to a set of digital resources at the minimum possible cost.

While the functional or license-based public domain as a regulatory instrument could liberate large parts of software, content and data on the basis of the individual preferences of the creator, this has not addressed the issue of how to introduce more content into this common pool of the commons. To a great extent, this problem has been addressed with public access legislation, as a result of the need to provide access to the individual for information that involves its person. Such public access would allow the public administration to be checked for its actions or, in the case of legislative documents being made available to the public, the citizen to be able to meaningfully participate in the public sphere. These are normally Freedom of Information Act (FOIA) type of regulation or Crown Copyright/ No Copyright Regimes on legislative material.

Additionally, a newer form of legislation, re-use legislation has gradually made an appearance in the form of Public Sector Information (PSI). Such legislation has as objective not merely to provide access to information for transparency reasons but rather to allow re-use of the information in order to create value added information services. While PSI legislation adds more content to the common pool of resources it does not directly influence or interact with copyright law. Consequently, it mandates the free flow of information that has been produced with public money.

7.3.3 Contributor Agreements as Legal Instruments beyond Licensing

As the ecosystem of open content increases, more legal instruments have to be taken into consideration. The content or data that are to be opened require to be cleared legally or are produced within a nexus of other legal relationships that also have to be explored in order to appreciate the way different flows of rights are regulated. Such is the case with contributor agreements that ensure that the rights are funnelled to a single point or particular employment contracts that contain provisions as to where the rights are to flow. In addition, many public institutions that wish to make content open are members of broader consortia that are governed by agreements that regulate the way in which data are produced and property is structured.

7.4 Flow of Value, Content, and Rights

Value is produced through the flow of content and data between the stakeholders. These flows are regulated by technological and legal forces, market, and norms (Lessig, 2006). To develop an analytical tool that explores the ways of value production, we identify

three variables: 1) *value*, 2) *content*, and 3) *rights* (Pasquale, 2006; Young, 2005).

We observe the following: (i) The flow of content produces value: e.g., when a user downloads a digitised sound recording, the user gains value in terms of knowledge and the public-sector organisation increases the visibility of its collection and hence its cultural value. (ii) The flow of content is regulated by the rights existing on it: e.g., when content is licensed under a Creative Commons Attribution licence (Lessig, 2007), it may be freely exchanged between users provided they make reference to the author of the work. (iii) The flows of content and rights do not follow the same path: e.g., in the case of User Generated Content that resides in a repository and is licensed under a Creative Commons licence, the content flows from the repository to the user, whereas the licence (rights) flows from the user that has authored the content to the one that uses it.

7.4.1 Flows of Content and Metadata

There are various types of content that are circulated within the boundaries of a particular project or could potentially flow across different projects. One way of classifying electronic content is on the basis of its source, resulting in different trajectories of flow:

- a) *User-generated content* tends to flow in a circular form: the content flows from the user to the organisation that manages the project and then again from the organisation to other users. If the material is repurposed then the circle starts again.
- b) *In-house produced content* flows from the organisation that manages the project to intermediaries that will further disseminate the content to other intermediaries, or to the end-user.
- c) *Third-party content* flows from the third parties to the organisation managing the project and then to the user. In the case where only hyperlinks to the third-party content exist, the content flows directly from the third party to the end-user.

We also need to make a distinction between content and metadata, the former referring to the actual works and the latter to information about them. The differentiation is important both because rights may exist on both types of data. Different business models may derive their primary value from the production and use of content, or from the production and use of the metadata.

7.4.2 Clearance of Rights and Permission Flows

Rights holders are able to manage their rights by providing different types of licences or permissions allowing licensees to perform specific acts, such as redistributing (sharing) or repurposing content. Content comprises multiple layers and types of rights that regulate its flow. More specifically, multiple types of rights may exist on a specific work or multiple permissions may be required for its use. These include intellectual property rights, such as copyrights or trademarks; permissions to use personal data or information with respect to minors; and prior informed consent for use of sensitive personal data. In this context, the *clearance of rights* is defined as the process of obtaining permission to use the content.

We use the term *permission flows* to denote flows of copyright licences between different users and stakeholders in each of the models. In most cases, the copyright owner only awards a licence, i.e., a set of permissions, that flows within the boundaries of the project. While the concept of permission mainly refers to licences, it is broader than mere licensing. For example, permissions might be sought from parents for the use of the works of their children, or a copyright transfer can take place. The management of certain other types of rights and permissions, such as the management of confidentiality agreements, obtaining prior informed consent and following data protection legislation, are considered to be important risk-management considerations.

Multiple *layers of rights* may exist on what appears to the end-user as one single work. An oral history recording may, for instance, consist of multiple underlying literary works, a performance and the actual sound recordings. Each of these works is awarded by the copyright legislation different sets of moral and economic rights. These multiple types and layers of rights may well belong to different rights holders, causing significant frictions in the flows of works that are governed by those rights.

The 'IPR jam' or 'licence pollution' phenomenon describes the situation where existence of multiple layers of rights and rights holders on a single object make any extraction of value impossible (Elkin-Koren, 1997, 1998, 2005, 2006). The optimal regulatory mixture takes into account a combination of legal and technological means (Black, 2000, 2001; Lessig, 2006; Murray, 2007; Murray and Scott, 2002; Wu, 2003).

Note that ownership over the physical or digital carrier of a work *does not* automatically entail ownership of the IPR or a licence for the distribution or repurposing of content. For example, a museum may own a painting but still may not be able to digitise it. Even when the rights owner provides a digitisation licence, this may allow the making of copies only for preservation purposes and not for dissemination to the general public.

7.4.3 Flows

Focusing on the tracing of flows of value, permissions, and content allows a better understanding of content-related transactions in terms of the life cycle of flows, and the association of flows with each other. Flows of value, permissions and content flows are always associated. However, it is not clear whether such associations are beneficial for the objectives of a project or what barriers they face. Flows of permissions and content will inevitably produce some kind of value, but it is important to examine whether such value types are consistent with a project's objectives and the cost of producing such value.

When a project seeks to produce a certain type of value but legal constraints limit the flows of permissions and, hence, of content; this may consequently create frictions in the desired flow of value. Such frictions limit or cancel the flow of content. For example, sound recordings may only be used on site, not making use of the available technological options, or digitised recordings may never be made available. As a result, flows of cultural value with respect to specific types of content may be never materialised.

Tracing the life-cycle of flows of value, content, and permissions involves the following

steps:

- a) Identification of project objectives and types of value.
- b) Identification of layers and types of content and rights, including an assessment of their documentation process.
- c) Tracing the cycle of flows of content and permissions within a project: the flows of content and rights do not always coincide, or they may follow multiple paths. For example, a library may acquire a licence from a researcher for all the rights on a sound recording, but might only license listening to the content to the end-user. A work may enter the museum in a physical form and be made available in a digital form of variable quality to different groups of users.
- d) Tracing the cycle of flows of content and permissions across projects: organisations of the broader public sector often need to be able to use each other's content. For example, the BBC Century Share project makes the content of other Strategic Content Alliance (SCA)¹ sponsor organisations available to a wider audience than each individual organisation would be able to disseminate it to.
- e) Matching flows of content, permissions and value: different types of value are produced as a result of flows of rights and content.

7.5 Models of Permission and Content Flows

We categorise IPR management approaches into three main models of content and permission flows, named after the key characteristic of the way in which the flows are structured: (a) the 'Star-Shaped' model; (b) the 'Snow-Flake' model; and (c) the 'Clean Hands' model. Note that flows of permissions related to *moral rights* are not treated in these models. For the flow models we distinguish between aggregation (collection) and dissemination (distribution) of content as two separate actions.

Such models are illustrative of the ways IPR management may enable or hinder the flow of content. They also constitute a basic typology of the ways different IPR management models could be associated with different types of value production and organisational objectives.

7.5.1 The Star-Shaped Model

The star-shaped model involves a central entity that is responsible for the acquisition of the content and the required licences from the content providers and other rights holders, both of whom may be individuals, organisations or other projects. The star-shaped model may be applied to collections, and dissemination of permissions and content. Therefore, most projects involving digitisation of analogue material are often organised using the star-shaped model.

The entity that resides at the centre of the star is responsible both for the clearance of the

1. See <http://www.jisc.ac.uk/contentalliance>; accessed March 10, 2012.

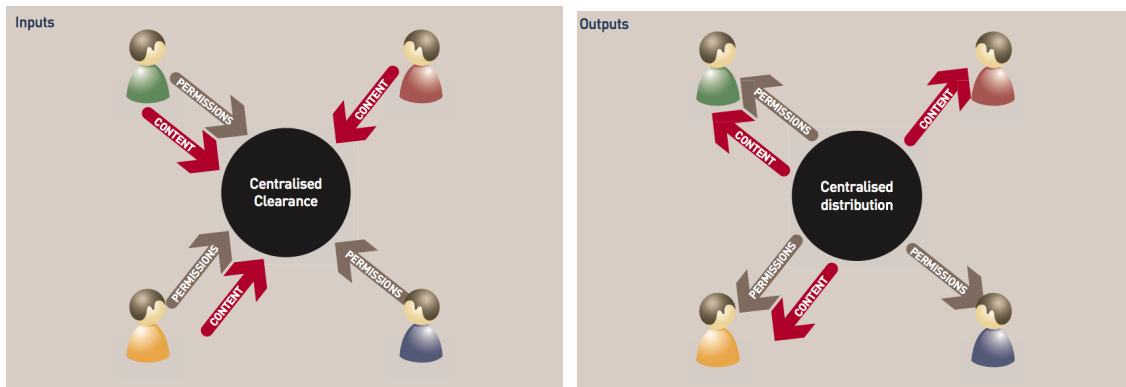


Figure 7.2. Acquisition (inputs) and dissemination (outputs) in the star-shaped model

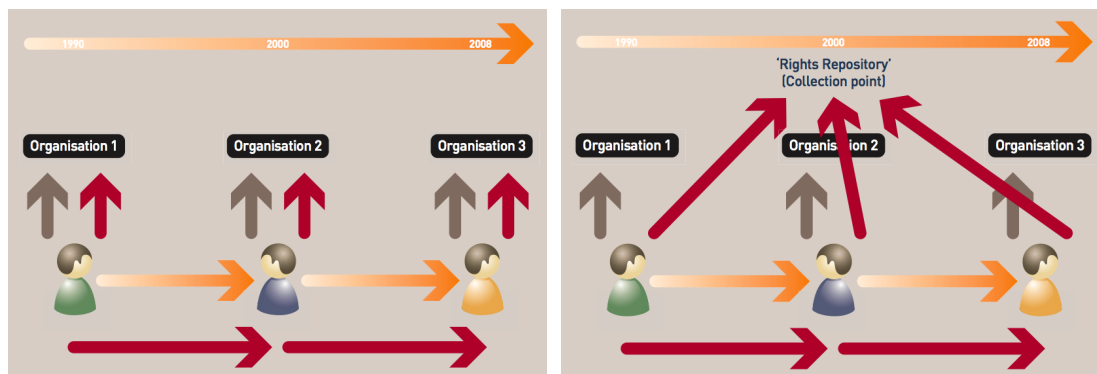


Figure 7.3. During the course of time the point of collection in a project can change. To preserve continuity, a single collection point needs to be made responsible.

rights and the curation of the material. The flows of permissions and content follow the same direction, although they can follow different paths, i.e., flowing from the supplier to the central entity. This is because it is likely that the rights owner and the content provider may be different, and the supply of each may be made at different times, particularly when rights are cleared for legacy material already owned by the central entity.

The acquisition of permissions, illustrated in Figure 7.2, may follow a push or pull model, i.e., either the central entity is in possession of the content and asks the relevant permissions from the rights holder or the rights holder deposits the material with the central entity agreeing to license the work under specific terms and conditions set by the central entity.

The star-shaped model reduces risks of copyright infringement as the process of copyright clearance is managed at a single point. At the same time, the cost for the organisation managing the process increases, as such a model requires a specialised service or unit to perform the function. As a result, this model could be beneficial for a large organisation that can achieve economies of scale, but may not be sustainable for small and medium size organisations. In the latter case, a star-shaped model may lead the organisation to a strategy of avoiding digitisation of works that require any copyright clearance in order to reduce costs.

Ideally, the metadata from the rights documentation should be in a standard form so that other institutions or projects can make use of them. For small and medium size organisations, ready-made clearance and risk management procedures should be ported and customised to their personnel and technology requirements. Another solution would be to establish a clearance service for a specific sector at a national or international level, and thus reduce the costs for the individual organisations.

Digitisation projects should (i) document and standardise clearance processes; (ii) put a risk assessment and management scheme in place; (iii) standardise metadata to facilitate communication between different institutions; and (iv) establish a clearance service per sector, e.g., museums, or region in order to achieve economies of scale.

The star-shaped model may be applicable even in cases where the organisation collecting the content and the permissions keeps transforming, as shown in Figure 7.3. The continuity of a project can be preserved by ensuring that a single point is made responsible for the collection of content and permissions that the star-shaped model provides. This point of collection functions de facto as a rights repository and constitutes a solution for ensuring the permissions for collected content have been collected.

The dissemination of content under the star-shaped model may fit when both distribution and licensing of content is managed by a single central organisation. There are three broad scenarios of content and licence distribution under the star-shaped model: (a) public Internet distribution; (b) walled garden distribution, i.e., restricted distribution; and (c) hybrid public/walled garden distribution.

Dissemination over the Public Internet. Figure 7.2 illustrates the dissemination in the star-shaped dissemination over the public Internet. The permissible uses are specified in a form of custom-made licenses denoted as the End-User Licence Agreement (EULA) that reflect the policy and strategy of the specific organisation. Often, the EULA allows only private, non-commercial, or educational uses. Super-distribution, i.e., further dissemination by the users or publishing on their private website, and repurposing are usually prohibited.

The digital surrogates are normally of low quality, e.g., low resolution images or videos, low bit-rate sound recordings. For audio or video, the content is usually made available for streaming only rather than downloading. Technical Protection Measures (TPM) are not used for still images or audio (Akester, 2006). However, some of the audiovisual content is protected with TPM and downloading may be allowed only for a limited amount of time, e.g., the BBC iPlayer². As a result, the content, both technically and legally, cannot be repurposed either by end-users or other public-sector organisations.

Walled garden distribution. In the walled garden distribution, the content is made available over a controlled network, as illustrated in Figure 7.4. The dissemination of

2. See <http://www.bbc.co.uk/iplayer/>; accessed March 10, 2012.

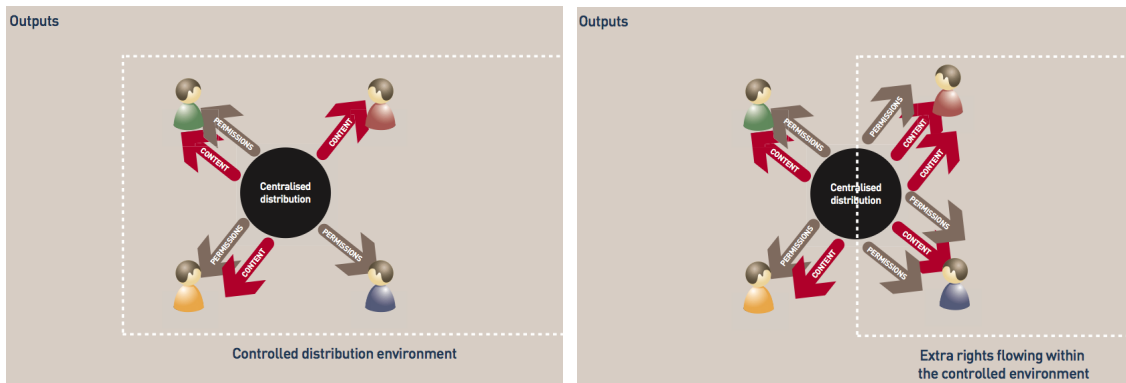


Figure 7.4. Walled Garden Distribution (left) and Hybrid Walled Garden and Internet Distribution (right)

content over such a secured environment is expressed in the related EULAs and the technologies of distribution. The EULAs are custom-made licences that reflect the funding conditions of the specific digitisation programme or the charter of the digitising organisation. The technology normally allows access to the content either through a specific gateway or on the basis of the IP address. In most cases, TPM are not used on the actual content, but access is allowed only to authorised users over secure networks.

The rights awarded to the users are normally greater than those found over the public Internet. They normally include rights of reuse within a specific network or within a secure network. Such an approach may be problematic as it creates pools of content, that because of the licensing terms, may not be legally interoperable with content that is reusable under a standard public licence, such as the Creative Commons licences.

Hybrid public Internet – walled garden distribution. In this model, illustrated in Figure 7.4, different sets of content are distributed by the same central point both over public and secure networks with premium or full content being provided over the latter. Often a freemium business model is used for the distribution of such content. Different sets of rights are awarded to public users and the users within the walled garden, which can render content unusable for reuse.

The *license dilemma* appears when open content is combined with closed content in a hybrid model: if a custom-made licence allowing reusability in a hybrid model is employed, it will be very complex legally, and, subsequently, very expensive to combine the walled garden content with free Internet content, resulting in the creation of content islands. This may be desirable in the short term but may cause substantial clearance problems or may even make the recombination of the content unusable in the long run.

7.5.2 The Snow-Flake Model

In the snow-flake model, illustrated in Figure 7.5, the clearance of rights and acquisition of content is organised in clusters: rights are cleared and content is aggregated first locally, then in clusters of local units, and finally in a central hub. This model allows the reduction

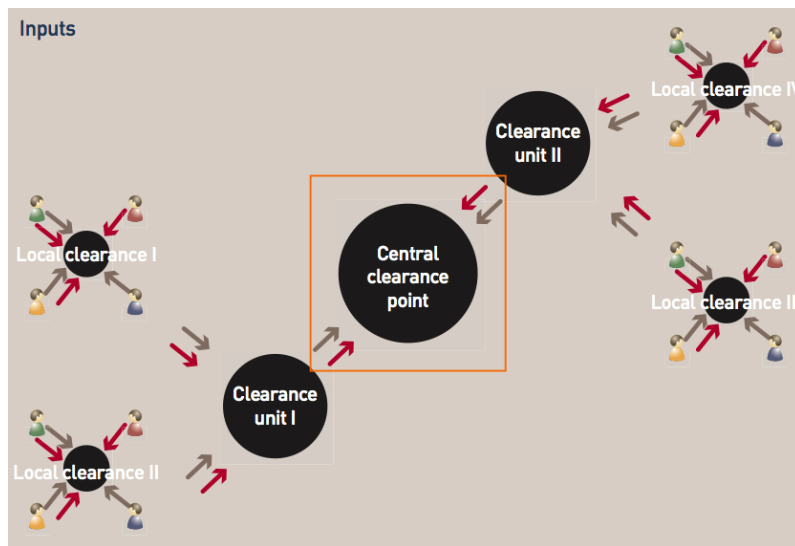


Figure 7.5. The Snow-Flake Model

of clearance costs for the central organisation since the costs of clearance are primarily covered by the local organisations or at the cluster level. The central organisation oversees and manages the whole process but is not involved in any clearance itself. Note that the central organisation needs to have in place standardised risk management and clearance procedures in order to ensure that the risk of copyright infringements is mitigated.

The snow-flake model is particularly popular in projects that (a) are geographically dispersed; (b) have multiple units; and (c) deal with more than one type of rights. In these cases, copyright, personal data, protection of minors etc., can be acquired and managed locally.

The snow-flake model is primarily used for content aggregation and rights clearance. Distribution and licensing of the content may follow a different model. For example, licensing of the content may follow a hybrid snow-flake and clean hands model: When clearance is completed in the local level (a) the content is licensed to the central entity; (b) there is cross-licensing of the content between the consortium parties; and (c) each consortium party decides by itself how to further license the content.

7.5.3 The Clean-Hands Model

In the clean-hands model, illustrated in Figure 7.6, the flows of rights and content follow entirely different paths. The content may be downloaded from a single point, whereas the licences flow directly between the users. The central organisation does not deal with copyright at all. Therefore, we use the metaphor of clean hands to describe this model.

The clean-hands model is not necessarily concerned with the aggregation of content or licences but rather with facilitating the respective flows. The aggregation of content could take place in a centralised fashion and hosted by the central organisation, or to be directly managed by the participants of the system. The central organisation is not at all concerned with acquiring any licences over the content, and ensures only that the end-

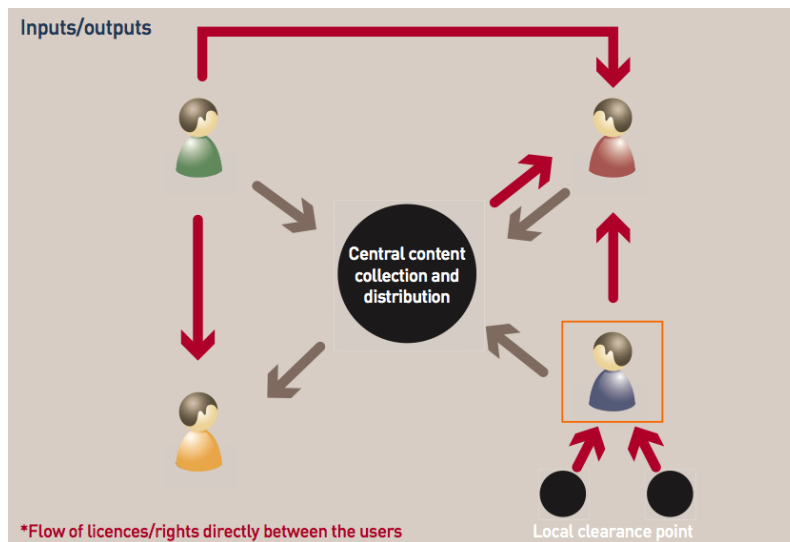


Figure 7.6. The Clean-Hands Model

users have the necessary permissions supplied by the rights owners.

The clearance of the content is pushed at the ends of the network or on the contributors of the content. These may be either individuals, legal persons or other projects. They are responsible not only for the copyright clearance but also for obtaining any other required permission such as Prior Informed Consent or personal data clearances.

The main risk management approach followed by the central organisation relies on their lack of direct involvement in obtaining any permissions for themselves and clearly stating in the service registration agreement that the end-user is responsible for the clearance of rights. Additional necessary measures include the provision of proper disclaimer clauses, clear notices, and take-down procedures.

This particular model can result in the possibility of the *licence pollution* phenomenon. Specifically, in a reuse scenario the copyright licences used have to be compatible with each other, otherwise they will lead to derivative works infringing the copyright of the content on which they are based. For example, since some Creative Commons licences are not compatible with each other, minimum care must be taken to inform the users accordingly if these licenses are used in a service. This may be done by ensuring that in the case of uploading a derivative work, the user is obliged to name the content sources and their respective licence. The system then should automatically inform the user about the compatibility of the source licences.

In any reuse scenario, the rights information should refer to the work, not the creator. Hence, it is necessary to have metadata attached to each work making explicit: (a) which works it is based on; (b) in which works it has been used; (c) overall, it is advisable to use standard licences and metadata so that linking with other organisations and projects is possible; (d) the more rights are offered to the licensee, the more the need for attribution; provenance; quality assurance; and adherence to data protection rules, processes for protecting minors and Prior Informed Consent rules.

The main sources of value in the clean hands model are: (a) the cultivation of communities; (b) the production of metadata; (c) the linking of relevant content; (d) reduction of redundancies; and (e) incremental innovation.

The clean-hands model is adopted in the following settings:

- 1) The central organisation is interested in aggregating content from other organisations or projects that provide content under a variety of licences. In this case, the central organisation may not even host the actual content, but only provide the links to the content and perform the functions of aggregation and curation. The value, in this case, derives from increasing visibility and associating content with other related content. Therefore, any metadata created are normally owned by the central organisation.
- 2) The central organisation is interested in the reuse of content provided either by end-users, other projects or organisations. The value comes from the reuse and incremental improvement of content.
- 3) The central organisation hosts only user-generated content that freely flows on the Internet. Value derives again from building on existing material and collective development. By pushing the rights clearance to the ends of the network, the organisation decreases clearance costs and mitigates risks. It is not responsible for managing the complex ownership questions that are likely to appear. In this case standardised licences, such as the Creative Commons licences, are used.

7.5.4 The Peer-to-Peer Model

There is a fourth model where the rights are cleared at a central point while the content is directly exchanged between users. This model can be used for user-generated content, often in combination with open licenses. The central organisation only deals with metadata on works. Also here, the flow of content and rights follow different paths.

7.6 Extracting Value

In the following, we relate different types of key values in terms of monetary and non-monetary values, as introduced in Section 7.4, to funding, IPR management, risk management, rights identification, maturity of IPR management, documentation of layers of rights, attribution, and regulatory issues. We also relate value to observations that are based on a case study by Tsiavos (2009), where nine cases for galleries, libraries, archives, and museums illustrate how to analyse the flows of content, value and rights across the public sector.

7.6.1 Value and Funding

Projects that are publicly funded need to use the production of value to ensure that existing funding will continue and new public funding will be provided. Monetary value can be created by the users who pay for the use of services, and, supported by non-monetary value, through public funding and donations. As a result of the major source of the monetary value being of public nature, the key objectives of such projects has been to achieve

public-serving purposes. Such purposes almost invariably require increasing access and allowing reuse of content, including sharing and repurposing. Some projects are funded by public money or donations in order to make content freely available for sharing and repurposing. In these cases, the users of such services do not directly pay for their use.

Although the value type may not be monetary, there are inevitably costs in the production and dissemination of content that have to be covered. These costs involve rights clearance costs (tracing rights holders, paying copyright fees for the acquisition of licences) and personnel costs (e.g., for the curation of the aggregated content or the monitoring of the service). Even when the value produced is recognised as monetary, other forms of value, such as cultural and educational value, are equally important for the success of a project.

7.6.2 Funding and IPR management

Funding plays a key role in the formation of a project's IPR policy. It may define the broader framework of managing IPR or require the licensing of the content to the funding organisation. For instance, the BBC Archives are made available only to UK citizens; or the Internet Archive makes all its content freely available as they have different funding mandates.

Often, a significant portion of the content produced or made available is publicly funded through grants that set specific conditions regarding its dissemination and use. Such conditions provide the framework for access and use policies that need to be followed by the funded project. For example, project developers might be required to make their project outputs freely available to Higher and Further Education communities for educational and non-commercial uses. In such cases users often also acquire a licence to share and repurpose the content. Such licences grant far more extensive rights to users compared to rights granted by commercial organisations.

Newbery et al. (2008) suggest that funding contracts could be used as a way to ensure licensing compatibility among different organisations and facilitate the cultivation of a common information environment. Clauses requiring licensing to the organisation providing the funding need to be thoroughly re-assessed in order to ensure that they cover only the material for which clearance has been secured; and the problem of IPR clearance has to be addressed in the level of funding contracts in terms of *a*) ensuring that clearance of rights is also funded, sometimes even as an auxiliary project; *b*) acknowledging the time management implication that any clearance procedure entails; and *c*) funding training programmes for the staff in the areas of general IPR understanding, copyright, open licensing, data protection, confidentiality and prior informed consent agreements. Such issues are outlined within the SCA IPR Toolkit (Korn, 2009).

7.6.3 Risk Management

Collections held by archives present rather complex issues because of the multiple types of content and rights involved, and subsequently the potential for numerous transactions. An analysis of the respective organisations with regards to these transactions on the basis of flows of rights and content, allows for the design of more effective risk-management

Risk Management Summary

- Risk management strategies need to operate at the level of individual rights, e.g., right of reproduction, right of attribution (Ciborra, 2004).
- Dates of expiration of rights should always be recorded.
- The permissions acquired by the organisation should be equal or more than the permissions the organisation grants to the user of its services.
- Risk management strategies need to be developed in the form of toolkits made available to different organisations to adjust them to their own projects^a (Lezaun and Soneryd, 2006).
- Risk management strategies need to be evaluated in conjunction with the intended value production streams.
- Training in IPR risk management processes have to be developed with respect to Taylor-Gooby and Zinn (2006): *a*) staff of organisations managing IPR-related projects; *b*) users of services that require them to do some form of pre-clearance or clearance of material; an *c*) project partners involved.

a. ... such as is the case with the various SCA toolkits (Korn, 2009).

strategies. Effective risk-mitigation strategies facilitate better flows of content and contribute to an increase of flows of value. Most risk-mitigation strategies are based on the following mechanism: *i*) identification of potential risks; *ii*) impact assessment; and *iii*) probability of risks.

Hutter and Jones (2006) claim that the existence of a comprehensive risk strategy is mainly contingent upon two factors: *i*) The experience of risk management in the organisation where the project is positioned: the more experienced the organisation, the more likely is that the specific project will also have a risk mitigation strategy in place. *ii*) The degree to which the project involves acquisition of licences by the organisation managing the project: the more licences the organisation managing the project acquires, the more likely it is that a risk mitigation strategy will be in place.

While some projects have a very comprehensive risk management tool in place as it acquires rights, others have not, e.g., when the rights are transacted directly between the creator and the end-user with the project only providing some basic infrastructure. Some organisations seem to take a very liberal approach to not interfering with the torrents the users are sharing and only blocking very recent content (movies, especially pornography) as these seem to be the riskiest types of content to be uploaded without prior permission from the copyright holders.

Risk management approaches need to be developed in the form of ready-made toolkits, and risk management training is required not only for the staff of organisations managing IPR but also to users performing clearance procedures. The SCA IPR toolkit (Korn, 2009) addresses such concerns. It is necessary to properly document the clearance process so

Rights Lowest Common Denominator:

The conditions of use of an object that comprises multiple layers of rights is set by the lowest common set of rights awarded by all contributors. If a particular owner cannot be identified or refuses permission, the work cannot be legally used (Sterling, 2003).

Frame 7.1. The Problem of Rights Lowest Common Denominator

that there are records of the material cleared.

7.6.4 Content and Rights Identification

Works and rights identification is a necessary step toward the development of risk management approaches. For example, the extent of the orphan-work problem must be identified to be able to implement measures to manage risk.

The existence of multiple layers of works and rights in the same object has increased the costs of clearance of rights because the number of authors to be identified and the rights to be negotiated has increased. The more layers of works and rights an object contains, the more unlikely it is that value, monetary or not, can be created. This phenomenon appears particularly in the context of digitisation projects. This phenomenon is a direct result of the clearance costs for content comprising of multiple types of rights. In some projects, the organisation managing the project does not have the resources to complete the clearance for such works, whereas in other projects, the time limitations that the project management imposes make the clearance of such content very problematic. For instance, a sound recording with performance rights, sound recording rights, literary works, and musical works is very expensive to be cleared as different rights holders must be identified and then asked to provide all the rights necessary for the work to be usable.

The phenomenon of *Rights Lowest Common Denominator*, as defined in Frame 7.1, appears when multiple parties have rights on the same work, the most restrictive licence terms provided determines the use of the whole work. If no permission is given by just one rights owner, the work cannot be used at all. On the contrary, when the work is used and copies, even illegally on the basis of informal copynorms, the potentials for further creative use and documentation of the works is amplified (Schultz, 2006)

It is advisable to differentiate between physical and digital copies of the work as they are governed by different business models (Tsiavos, 2006). When a work is digitised, new rights on the digital record may be created. This element of rights creation from physical property has a seemingly paradoxical result: works that are no longer in copyright are more likely to be digitised and exploited as they have lower (or zero) clearance transaction costs. Also, in experience-intensive environments such as museums, the proliferation and free dissemination of digital copies of the work are increasing the value of the original physical object that is more likely to be visited and possibly create revenue for the memory institution. The less rights exist in a work the more likely it is to produce value of any kind as the presence of un-cleared rights radically increases transaction costs.

7.6.5 Maturity of IPR Management Models

It is neither possible nor desirable to always use a clean hands model. Pure clean hands models are only used where the organisation is only aggregating content that is both licensed and stored by the content providers themselves. In the case of torrent trackers the site only manages links to content and metadata whereas the actual content is stored by the users. In all other cases, the content is centrally stored but directly licensed between the participants of the project. Hybrid models are necessary for securing control points and managing the flows of value in relation to flows of rights and works. The maturity of the IPR management model that allows a project to adopt a suitable flow model, depends on the existence of proper IPR documentation, coherent IPR policies and appropriate risk management processes in place. Standardised tools, such as the SCA IPR Toolkit (Korn, 2009), could greatly assist organisations or projects that seek to adopt a suitable flow model.

The type of the IPR management scheme used by an organisation may be assessed on the basis of the existence of IPR documentation, IPR policies and IPR risk management in place and the way they may be serving flows of value. There is need for a Capability Maturity Model (Paulk et al., 1995) for open content.

7.6.6 Attribution and Provenance

Case studies indicate that the more permissions are conferred to the end-user in relation to the distributed content, the more likely it is that attribution and provenance requirements will appear. The reason is that the flows of value that are contingent upon the visibility of the work are non-monetary and mainly have to do with reputation. For example, in the case of the Internet Archive, where Creative Commons licences are used, allowing users to freely share and repurpose content, the project provides software for proper attribution or listing of the sources of a derivative work.

When the value also derives from the ability of other users to complement or repurpose the work, it must be possible to trace contributors both in order to properly attribute, to define collective ownership, to be able to trace potential violations of copyright or related rights such as moral rights, and communicate with the author of a repurposed item for further collaboration.

7.6.7 Legal and Regulatory Issues

The problem of high clearance costs appears mostly in collections of great cultural but low market value or extensive collections consisting of work with multiple layers of rights. In particular, large public organisations are obvious litigation targets, since they are difficult to be indemnified and run great reputation risks from violating any IPR-related rules. When different types of licences are used for the items stored in different collections some sort of licence management system is required. These systems range from simple Excel databases to the SPECTRUM standard³ used by the Collections Trust.

3. See <http://www.collectionslink.org.uk/spectrum-standard>; accessed March 11, 2012.

The economic rationale behind the existing copyright laws is appropriate for works that have a clear market value, such as commercial sound recordings (Barlow, 1994; Benkler, 1999; Boyle, 1992, 1997; Ghosh, 1998; Gordon, 1989; Watt, 2000). However, it is inappropriate for works with low market value, which are often not properly documented, but with high cultural and educational value. For such works the costs of identification and negotiations of rights is far greater than the actual cost of acquiring the rights. Such costs often cancel any effort to make them available. This is the case with orphan works (Boyle, 2008; Brito and Dooling, 2005; Huang, 2006).

When a work comprises multiple layers of rights belonging to more than one rights holder, it is most likely that the transaction costs of clearance will make its digitisation or dissemination impractical. This is not merely a result of the primary costs described previously, but also due to the incremental cost that each additional work has for the whole of the project in terms of time: any publicly funded project has to be completed within a certain time frame and this is not possible if the rights are not previously cleared.

The situation is extremely difficult since the funding is for content that will be made publicly available, but the content cannot be made available if the rights are not cleared. If the content is first cleared and then digitised the risk of project delay appears as clearance procedures can be extremely lengthy. If the content is first digitised and then cleared, the project runs the risk of having digitised material that will never appear in public. This might be in breach of the funding agreement, and certainly will involve wasted time and money.

References

- Philippe Aigrain. Diversity, attention and symmetry in a many-to-many information society. *First Monday*, 11(6), 2006. URL <http://firstmonday.org/ojs/index.php/fm/article/view/1337/1257>.
- Patricia Akester. Digital rights management in the 21st century. *European Intellectual Property Review*, 28(3):159–168, 2006.
- Laurence Allard. ExpressYourself 2.0: blogs, pages perso., fansubbing : de quelques agrégats technoculturels ordinaires à l'âge de l'expressivisme généralisé. In Eric Margret, Eric Macé, Dominique Pasquier, Hervé Glévarec, Marie-Hélène Bourcier, Laurence Allard, and Armand Colin, editors, *Le temps des médiacultures*. Université Lille 3, 2005. URL http://culturesexpressives.fr/lib/exe/fetch.php?media=express_yourself_2.pdf. in French.
- John Perry Barlow. The economy of ideas. *Wired*, 2.03, March 1994. URL http://www.wired.com/wired/archive/2.03/economy.ideas_pr.html.
- Michel Bauwens. The political economy of peer production. *Post-autistic economics review*, 37:33–44, 2006. URL <http://www.paecon.net/PAERreview/issue37/Bauwens37.htm>. 28 April 2006.

- Yochai Benkler. Free as the air to common use: First amendment constraints on enclosure of the public domain. *New York University Law Review*, 74(2):354, May 1999.
- Julia Black. Proceduralising regulation: Part I. *Oxford journal of legal studies*, 20(4):597–614, 2000. ISSN 0143-6503.
- Julia Black. Proceduralising regulation: Part II. *Oxford journal of legal studies*, 21(1):33–58, 2001. ISSN 0143-6503.
- James Boyle. A theory of law and information: Copyright, spleens, blackmail, and insider trading. *California Law Review*, 89:1413, 1992. URL <http://www.law.duke.edu/boylesite/law&info.htm>.
- James Boyle. *Shamans, Software and Spleens : Law and the Construction of the Information Society*. Harvard University Press, October 1997. ISBN 0674805232.
- James Boyle. *The Public Domain: Enclosing the Commons of the Mind*. Yale University Press, 1 edition, December 2008. ISBN 0300137400. URL <http://www.thepublicdomain.org/download/>.
- Jerry Brito and Bridget C.E. Dooling. An orphan works affirmative defense to copyright infringement actions. *Michigan Telecommunications and Technology Law Review*, 12(Fall): 75–113, 2005. URL <http://www.mttl.org/voltwelve/brito&dooling.pdf>.
- Claudio Ciborra. Digital technologies and the duality of risk. Discussion Paper 24, ESRC Centre for Analysis of Risk and Regulation, London School of Economics, October 2004. URL <http://eprints.lse.ac.uk/36069/1/Disspaper27.pdf>.
- Esther Dyson. Intellectual value: A radical new way of looking at compensation for owners and creators in the net-based economy. *Wired*, 3.07, July 1995. URL <http://www.wired.com/wired/archive/3.07/dyson.html>.
- Niva Elkin-Koren. Copyright policy and the limits of freedom of contract. *Berkeley Technology Law Journal*, 12(1):93–113, 1997.
- Niva Elkin-Koren. Copyrights in cyberspace – rights without laws? *Chicago Kent Law Review*, 73:1155–1201, 1998.
- Niva Elkin-Koren. What contracts cannot do: The limits of private ordering in facilitating a creative commons. *Fordham Law Review*, 74:375–422, November 2005.
- Niva Elkin-Koren. Exploring creative commons: A skeptical view of a worthy pursuit. In P. Bernt Hugenholtz and Lucie Guibault, editors, *The Future of the Public Domain*. Kluwer Law International, 2006.
- Alan Page Fiske. The four elementary forms of sociality: Framework for a unified theory of social relations. *Psychological Review*, 99:689–723, 1999.
- Rishab Aiyer Ghosh. Cooking pot markets: an economic model for the trade in free goods and services on the internet. *First Monday*, 3(3), 1998.

- Wendy J. Gordon. An Inquiry into the Merits of Copyright: The Challenges of Consistency, Consent, and Encouragement Theory. *Stanford Law Review*, 41(6):1343–1469, 1989. URL <http://www.jstor.org/stable/1228805>.
- Olive Huang. U.S. copyright office orphan works inquiry : Finding homes for the orphans. *Berkeley Technology Law Journal*, 21:265–288, 2006.
- Bridget M. Hutter and Clive J Jones. Business risk management practices: The influence of state regulatory agencies and non-state sources. Discussion Paper 41, ESRC Centre for Analysis of Risk and Regulation, London School of Economics, June 2006. URL <http://www2.lse.ac.uk/researchAndExpertise/units/CARR/pdf/DPs/Disspaper41.pdf>.
- Naomi Korn. IPR Toolkit: overview of this toolkit and key issues. Technical Report Document No. 568, JISC, 2009. URL http://sca.jiscinvolve.org/files/2009/04/sca_2009symp_ipr_toolkit_overview-final.pdf.
- Lawrence Lessig. *Code: And Other Laws of Cyberspace, Version 2.0*. Basic Books, 2006. ISBN 0465039146. URL <http://codev2.cc/download+remix/Lessig-Codev2.pdf>.
- Lawrence Lessig. Creative commons @ 5 years. The Lessig Letter, October 1 2007. URL <http://creativecommons.org/weblog/entry/7693>.
- Javier Lezaun and Linda Soneryd. Government by elicitation: Engaging stakeholders or listening to the idiots? Discussion Paper 34, ESRC Centre for Analysis of Risk and Regulation, London School of Economics, May 2006. URL <http://www2.lse.ac.uk/researchAndExpertise/units/CARR/pdf/DPs/Disspaper34.pdf>.
- Karl Marx. *Value, Price, and Profit. Addressed to working men*. S. Sonnenschein, London, 1865. URL <https://www.marxists.org/archive/marx/works/download/pdf/value-price-profit.pdf>. Ed. Eleanor Marx Aveling. Manuscript written between end of May and June 27, 1865, first published 1898.
- Andrew Murray. *The Regulation of Cyberspace: Control in the Online Environment*. Routledge Cavendish, 1st edition, 2007. ISBN 1904385214.
- Andrew Murray and Colin Scott. Controlling the new media: Hybrid responses to new forms of power. *The Modern Law Review*, 65(4):491–516, 2002.
- David Newbery, Lionel Bently, and Rufus Pollock. Models of public sector information provision via trading funds. study, UK Department for Business, Enterprise and Regulatory Reform (BERR) and HM Treasury, February 2008. URL <http://www.berr.gov.uk/files/file45136.pdf>.
- Frank A. Pasquale. Toward an ecology of intellectual property: Lessons from environmental economics for valuing copyright's commons. *Yale Journal of Law & Technology*, 8 (78), January 2006. Seton Hall Public Law Research Paper No. 12.
- Mark C. Paulk, Charles V. Weber, Bill Curtis, and Mary Beth Chrissis. *The Capability Maturity Model: Guidelines for Improving the Software Process*. Addison-Wesley, 1995.

- David Ricardo. *On the Principles of Political Economy and Taxation*. John Murray, London, 1817.
- Mark F. Schultz. Copynorms: Copyright law and social norms. In Peter K. Yu, editor, *Intellectual Property and Information Wealth*. Praeger, Santa Barbara, 2006. ISBN 0-275-98882-1. URL <http://ross.mayfirst.org/files/schultz-mark-copynorms.pdf>.
- Adam Smith. *An inquiry into the nature and causes of the wealth of nations*. Printed for W. Strahan and T. Cadell, London, 1776.
- Adrian Sterling. *World Copyright Law*. Sweet & Maxwell, 2003. ISBN 978-1847032805.
- Peter Taylor-Gooby and Jens Zinn. *Risk in social science*. Oxford University Press, Oxford; New York, 2006.
- Prodromos Tsiavos. Re-inventing protection: Autonomy, the commons and the untold copyright saga. *First Monday*, Special Issue: FM10 Openness: Code, Science and Content, 2006.
- Prodromos Tsiavos. Case studies mapping the flows of content, value and rights across the public sector. Report Document No. 567a, JISC, 2009. URL www.jisc.ac.uk/media/documents/publications/scaiprcasestudiesv2.pdf.
- Richard Watt. *Copyright and economic theory : friends or foes?* E. Elgar, Cheltenham, UK; Northampton, MA, 2000. ISBN 1840643129.
- Tim Wu. When code isn't law. *Virginia Law Review*, 89:697–751, June 2003.
- Alison Young. *Judging the image : art, value, law*. Routledge, London; New York, 2005. ISBN 041530184X (pbk.), 0415301831 (hbk.).

8 Open Standards



by Wolfgang Leister

A *technical standard* is an established norm or requirement about technical systems. It is usually a formal document that establishes uniform engineering or technical criteria, methods, processes and practises. In contrast, a custom, convention, company product, corporate standard, etc. which becomes generally accepted is often called a *de facto standard*.¹ A technical standard is usually developed and maintained by an organisation, trade union, or a regulatory body². There is no legal limitation to who can develop and maintain standards, i.e., everybody can issue a standard³. Technical standards are usually designed as reference to technical requirement documents and contracts, and to foster interoperability between technical systems. However, as we will see later in this chapter, some organisations use standards to control innovation and marketshare.

Several types of technical standards are available: (a) A *standard specification* is a set of requirements for an item, material, component, system or service. In information technology, this might be the specification of a document or media format, such as text, images, or sound.⁴ (b) A *standard test method* defines procedures and metrics how to produce test results.⁵ Other, more informal technical standards include (c) *standard practise* as a set of instructions for performing operations or functions; and (d) *standard guide* as general information on a subject. Further, we mention the (e) *standard definition* as formally established technology; and (f) *standard units* from physics, chemistry and mathematics.

A *profile* to a standard is a selection of capabilities and specification of some parameters defined in a technical standard applicable to certain purposes. Since standards are defined as general as possible, some combinations of parameters are not applicable for some application areas. For example, while a standard for encoding video is not application-specific, profiles with specifications of parameter ranges and capabilities may be defined

1. See en.wikipedia.org/wiki/Technical_standard; accessed August 25, 2011.
2. Examples for organisations maintaining standardisation documents include the Internet Engineering Task Force (IETF), the World Wide Web Consortium (W3C), and the European Broadcasting Union (EBU). Examples for regulatory bodies are the International Organisation for Standardization (ISO), Deutsches Institut für Normung (German Institute for Standardisation, DIN), Standard Norge (SN), the International Telecommunication Union (ITU, an organisation under the United Nations) Telecommunication Standardization Sector (ITU-T), and the International Electrotechnical Commission (IEC).
3. Note that standards that are not adopted or supported are not worth much.
4. Examples for such standards include the Portable Document Format (PDF, ISO 32000-1), the image format JPEG (ISO/IEC 10918-1), or MPEG-1 (ISO/IEC 11172-1) and MPEG-2 (ISO/IEC 13818-1).
5. Examples for such standards include the ITU-T BT.700, a standard for video quality assessment, and standards how to test technical broadcast quality by the European Broadcasting Union (EBU, ebu.ch).

for its use for television, for the Internet, for mobile devices, and so forth. Therefore, when specifying compliance with a standard, it must be specified which profiles are applicable for a specific implementation.

The availability of standards differ depending on the publisher and the type of standard. For public documents, these are available in libraries or can be purchased for a fee, such as the standards by ISO. Other standards are freely accessible on the Internet, such as the standards by the W3C and the IETF. Standards by private bodies are circulated according to their own determination.

Some standards, such as standards for media coding⁶ in IT, only describe how to decode media content, while methods how to encode media need to be developed. However, most of these standards often contain a part denominated as *Reference Software* or similar, which contains an unoptimised implementation as a proof of concept.

Some standards contain information that relates to patents. The users of a standard, e.g., issued by the ISO, must be aware that these can contain patents, and are, therefore, not possible to implement without consent of the patent holder. One example is the video codec H.264.

8.1 Open Standards

The term *open standard* is defined differently by various organisations and scholars. The definitions contain various aspects, such as (1) publicly available and possible to copy, distribute and use freely or for a nominal fee; (2) free to use⁷; (3) implementable on royalty-free basis; (4) non-discriminatory with respect to who uses it and to what purpose; (5) non-discriminatory and reasonable fees for use; (6) open process regarding during definition of a standard; and (7) having a complete implementation available with an open license⁸.

Considering the term *open* as positive, the different organisations embrace different aspects of openness. In most organisations, a standard is approved by formalised committees according to a predefined voting process. In an open process, all parties that are interested can participate, and a consensus between these participants will define the standard. In some standardisation bodies, there are rules who can participate. For instance, the ISO allows a certain number of participants from every interested country that are appointed by the national standardisation bodies. In other organisations, such as the IETF, the participation is much wider, and more adapted to the CBPP principle.

Regarding royalties and patents, the W3C ensures that its specifications can be implemented on a royalty-free basis. On the other hand, major standardisation bodies, such as the IETF, the ISO, many national standardisation bodies, the IEC, and the ITU-T, permit that standards contain specifications whose implementation may require payment of

6. Examples include the standards mentioned in footnote 4 on the preceding page.

7. The term *use* in this context does not imply that the standardisation document is free of cost.

8. In the case of an IT standard, a FOSS implementation must be available; in the case of hardware, an implementation using an open hardware license must be available.

licensing fees, e.g., due to patents. Their definition of openness permits that the patent holder can impose *reasonable and non-discriminatory* royalty fees and other licensing terms in implementers and users of a standard.⁹

For the ITU-T, openness consists of a standard being *made available to the general public and [...] developed (or approved) and maintained via a collaborative and consensus driven process*, which is reasonably open to all interested parties. Intellectual property rights are licensed world-wide on a non-discriminatory basis to reasonable terms and conditions. The negotiations about these are left to the parties. The IETF operates with a similar definition.

The European Union requires open standards to be adopted and maintained by non-profit organisations, having the standardisation documents available freely or at a nominal fee, and not allowing constraints on the re-use of a standard. They require that intellectual property rights are made irrevocably available on a royalty-free basis. There are also many national definitions of what an open standard is.¹⁰

As outlined above, international standards from some standardisation bodies may contain intellectual property rights, such as patents. Creating FOSS based on technologies that build upon these standards might therefore be difficult, depending on the licensing terms. While the standardisation bodies talk about *reasonable and non-discriminatory royalties*, the issue of royalties is a unsolvable problem in FOSS. As a consequence, some parts of some standards may not be implemented as FOSS.¹¹

In order to avoid patents in standards, Perens (no date) defined six principles for standards based on (1) availability; (2) end-user choice; (3) no royalty; (4) no discrimination; (5) openness on extension or subset; and (6) limitations of predatory practises.

The W3C uses a different definition¹² based on 1) **transparency** – process in public; availability of technical discussions, meeting minutes, etc. 2) **relevance** – thorough analysis before starting standardisation; 3) **openness** – anybody can participate on a worldwide scale; 4) **impartiality and consensus**; 5) **availability** – free access to standard text; clear intellectual property rights rules for implementation, allowing FOSS development; and 6) **maintenance** – ongoing process for testing; revision; permanent access.

The organisation DIGISTAN¹³ defines open standards from the perspective of freedom

9. Among the here mentioned standardisation bodies, the IETF and the ITU-T name their standards as *open standards*. even though they contain a patent fee licensing requirement.

10. See en.wikipedia.org/wiki/Open_standard; accessed August 25, 2011.

11. An example: The well-known MP3 codec used in the music industry is part of MPEG-1 (ISO/IEC 11172-3:1993) as *MPEG Audio Layer 3*. The Fraunhofer IIS and Thomson Consumer Electronics have been granted patent rights on the MP3-technology, and they demand royalties on every distributed MP3-encoder, even if distributed as FOSS. The *BladeEnc* project that developed an MP3-encoder faced this problem. The software is licensed under the GNU GPL, but is not allowed to be downloaded or used in some jurisdictions; see <http://www2.arnes.si/~mmilut/>. As a consequence, the FOSS developers adopted alternative sets of codecs that do not contain patents, such as the Vorbis video codec, and related FOSS implementations; see <http://en.wikipedia.org/wiki/Vorbis>; accessed August 27, 2011.

12. See <http://www.w3.org/2005/09/dd-osd.html>; accessed August 27, 2011.

13. See <http://www.digistan.org/text:rationale>; accessed August 27, 2011.

Open Standards Principles:

1. **Availability.** Open Standards are available for all to read and implement.
2. **Maximize End-User Choice.** Open Standards create a fair, competitive market for implementations of the standard. They do not lock the customer in to a particular vendor or group.
3. **No Royalty.** Open Standards are free for all to implement, with no royalty or fee. Certification of compliance by the standards organization may involve a fee.
4. **No Discrimination.** Open Standards and the organizations that administer them do not favor one implementor over another for any reason other than the technical standards compliance of a vendor's implementation. Certification organizations must provide a path for low and zero-cost implementations to be validated, but may also provide enhanced certification services.
5. **Extension or Subset.** Implementations of Open Standards may be extended, or offered in subset form. However, certification organizations may decline to certify subset implementations, and may place requirements upon extensions.
6. **Predatory Practices.** Open Standards may employ license terms that protect against subversion of the standard by embrace-and-extend tactics. The licenses attached to the standard may require the publication of reference information for extensions, and a license for all others to create, distribute, and sell software that is compatible with the extensions. An Open Standard may not otherwise prohibit extensions.

Source: © Bruce Perens <http://perens.com/OpenStandards/Definition.html>.

FSFE Open Standards Definition: An Open Standard refers to a format or protocol that is

1. subject to full public assessment and use without constraints in a manner equally available to all parties;
2. without any components or extensions that have dependencies on formats or protocols that do not meet the definition of an Open Standard themselves;
3. free from legal or technical clauses that limit its utilisation by any party or in any business model;
4. managed and further developed independently of any single vendor in a process open to the equal participation of competitors and third parties;
5. available in multiple complete implementations by competing vendors, or as a complete implementation equally available to all parties.

Source: © 2001-2011 Free Software Foundation Europe. <http://fsfe.org/projects/os/def.html>.

to use, improve upon, trust, and extend a standard over time; and freedom from all costs and tariffs associated with the above freedoms. Their definition requires, amongst others, that *patents possibly present on (parts) of the standard are made irrevocably available on a royalty-free basis*. In contrast, the Free Software Foundation Europe (FSFE) do not base their definition on cost, but more on freedom. Their definition requires that a standard is free from legal or technical clauses that limit its utilisation by any party or in any business modes. Additionally, it requires that all components or extensions that have dependencies on formats or protocols need to meet the definition of open standards.

Krechmer (1998, 2006) sets out ten principles for open standards: 1) **Open Meeting** – all may participate in the standards development process; 2) **Consensus** – all interests are discussed and agreement found, no domination; 3) **Due Process** – balloting and an appeals process may be used to find resolution; 4) **Open IPR** – how holders of IPR related to the standard make available their IPR; 5) **One World** – same standard for the same capability, world-wide; 6) **Open Change** – all changes are presented and agreed in a forum supporting the five requirements above; 7) **Open Documents** – committee drafts and completed standards documents are easily available for implementation and use; 8) **Open Interface** – supports proprietary advantage (implementation); each interface is not hidden or controlled (implementation); each interface of the implementation supports migration (use); 9) **Open Access** – objective conformance mechanisms for implementation testing and user evaluation; 10) **On-going Support** – standards are supported until user interest ceases rather than when implementer interest declines.

Krechmer also outlines the differences between his principles and the ones by Perens (no date). Krechmer indicates that Perens does not address the requirements *One World* and *On-going Support*. The principles by Krechmer are designed to address the different economic motivations of the stakeholders: while creators embrace most the principles 1-6, for developers the principles 4-9, and for users the principles 4-10 are most relevant.

8.2 Embrace, extend, and extinguish

The phrase *Embrace – Extend – and Extinguish*¹⁴ describes an internal Microsoft strategy for entering product categories involving widely used standards, extending those standards with proprietary capabilities, supporting new functionality that is taken up by the users. When these extensions become a *de facto standard*, they use the proprietary additions to the disadvantage for its competitors. This strategy has been part of a trial against the Microsoft Corporation¹⁵.

When a company uses this strategy, adding these features as FOSS could be difficult, and thus it creates disadvantages for its competitors. As a counter-measure, efforts to reverse-engineer protocols could be applied by FOSS developers. However, not in all cases this is legally or technically possible. Additionally, if the proprietary additions contain patented technologies, FOSS implementations are impossible as we will discuss in Section 8.5.

14. See http://en.wikipedia.org/wiki/Embrace,_extend_and_extinguish; accessed August 25, 2011.

15. See <http://www.justice.gov/atr/cases/f2600/2613.htm>; accessed August 28, 2011.

To avoid this, the different definitions of what an open standard is, include requirements that (a) all additions of an open standard need to be an open standard according to the same definition; or (b) the standard, including all additions need to be implementable as FOSS. The possibility to enforce such standards is that the most important and influential governments set a suitable definition of *open standards* as a requirement. In addition, they can implement these requirements for all governmental or public purchase of systems. While such a regime can force a change, we recognise that major standards follow a different policy regarding these issues.

8.3 Open Formats

An *open file format* is a published specification for storing digital data, either maintained as a standard or as a de-facto industry-defined specification that can be implemented by both proprietarily and as FOSS.¹⁶ In contrast to open formats, closed formats are considered a *trade secret*. Open formats that do not contain intellectual property rights, such as non-free licenses, patents, trademarks, or other restrictions, are denoted as *free formats*.

8.4 Standardisation and the Public Sector

Standardisation in the public sector is an important issue since a) the public sector communicates with the citizens using documents; and b) the public sector has implemented many systems that need to interact with each other¹⁷. In both cases, it is in the interest of both the public and the governmental institutions to employ as many open standards as possible¹⁸.

The public sector administrations in many countries have recognised this problem, and have imposed restrictions on which standards can be used in the public sector, i.e., require the use of open standards. However, due to the market penetration of some vendors, this cannot always be enforced.

When communicating with the citizens, there are several requirements to which document standard to use. These requirements include a) the documents need to be accessible without imposing extra licensing costs to the citizen; b) the documents need to be usable on all relevant software and hardware platforms; and c) requirements due to universal access, privacy, and other local regulations need to be satisfied. In such a definition, open standards that are implementable as FOSS will at least satisfy the requirements a) and b).

8.4.1 Document formats in the Public Sector

When communicating with the citizens, it is important that all citizens have access to the documents regardless of what software they are using. Therefore, the public sector has

16. See http://en.wikipedia.org/wiki/Open_format; accessed August 25, 2011 and www.info.org/free_file_format.html; accessed August 25, 2011.

17. In Norway, the term *samhandling* is used.

18. We recognise, that it is in the interest of some system vendors to implement proprietary technology in the public administration which can cause a user-lock-in, i.e., the user is bound to this vendor's technology base.

done efforts to standardise document formats that are open in the sense that software is available to the citizens without extra costs. In several countries the public administration has defined which document standards are allowed or preferred when communicating with the citizen.

The technologies of the W3C consortium that are used on the web, do not contain technology that cannot be implemented on all platforms, such as *HTML*¹⁹. Therefore, HTML is the preferred document format for that purpose. However, in some situations, this is not always practical when documents need to be presented in different form. Video and sound documents might also be part of the communication with the citizen, and need therefore also be openly accessible.

For read-alone text documents, also including graphics, the previously proprietary de-facto standard PDF developed by Adobe Systems²⁰ is often used. PDF was officially released as an open standard on July 1, 2008, and published by as standard ISO 32000-1:2008. Adobe also granted in a Public Patent License to ISO 32000-1 royalty-free rights for all patents owned by Adobe that are necessary to make, use, sell and distribute PDF compliant implementations.²¹

For other documents the Open Document Format for Office Applications²² (ODF), an XML-based file format for representing electronic documents such as spreadsheets, charts, presentations and word processing documents was created, originally as format for OpenOffice. ODF is an international standard: ISO/IEC 26300:2006.

In practice, in the public administration often creates documents in the Microsoft Office formats²³. However, these formats are proprietary technologies that have not been openly available^{24,25}. In order to meet the increasing requirements from many public administrations for an open standard for office applications, Microsoft has standardised the *Office Open XML* (OOXML, sometimes OpenXML)²⁶ first as ECMA-376, and later as ISO/IEC 29500.

There have been many disputes around the standardisation of OOXML and the process around it.²⁷ Note also that the OOXML specification is protected by multiple patents, where as the patent holder Microsoft corporation does not guarantee not to sue or con-

19. See <http://en.wikipedia.org/wiki/HTML>; accessed August 28, 2011.

20. See <http://en.wikipedia.org/wiki/Pdf>; accessed August 28, 2011.

21. However, making an accessible PDF document, i.e., a PDF document designed for user groups with special needs, can be difficult

22. See <http://en.wikipedia.org/wiki/OpenDocument>; accessed August 28, 2011.

23. See http://en.wikipedia.org/wiki/Microsoft_Office; accessed August 28, 2011.

24. The now published OOXML definition is an open standard. Some of the previously defined binary formats have been made available. See <http://www.microsoft.com/interop/docs/OfficeBinaryFormats.aspx>; accessed August 28, 2011.

25. Note, OpenOffice and other FOSS office systems can read and write the Microsoft Office file formats. However, there is no guarantee that the content is preserved, or that the files are compatible.

26. See http://en.wikipedia.org/wiki/Office_Open_XML; accessed August 28, 2011.

27. See <http://www.nooxml.org/>; accessed August 28, 2011, some amusing facts included: <http://www.nooxml.org/rice-pudding>; accessed August 28, 2011. Technical issues are discussed at <http://ooxmlisdefectivebydesign.blogspot.com/>; accessed August 27, 2011.

fer any other rights for competitors. OOXML also contains backwards compatibility to the older Microsoft formats, and is designed primarily for the Windows platform. Note also that the specification is not implementable a whole for competitors²⁸. Therefore, it is doubtful whether the OOXML specification qualifies as an open standard at all.

The Norwegian ministry of government administration, reform and church affairs has published a reference catalogue (Fornyings- og Administrasjonsdepartementet, 2009) for data formats to be used in the public sector. Besides HTML, PDF and ODF formats, several open multimedia formats for images, video and sound are defined as obligatory.²⁹

8.4.2 Long-term Document Storage and Digital Preservation

In the public sector, a large variety of, and a large volume of documents are produced. Many of these need to be preserved digitally, i.e., stored over a long time. Examples for such documents include publications, technical documentation, court documents, propositions, letters and minutes produced in the public sector³⁰, health care data, and tax records. Other material also include film material and other multimedia publications, books, radio transmissions that are required to be stored in the national archives by law. To store these data, it is important that open standards are used, so that these documents will remain accessible, also after the software or hardware that was used to produce these documents no longer is available.³¹

While the most obvious problems occur with documents stored on storage devices³² where the corresponding hardware no longer is available, there are also many examples of documents produced with proprietary software in proprietary data formats. Examples for these include technical drawings produced on Computer Aided Design (CAD)³³ systems and maintenance documents for buildings, ships, boats, etc. If the original system in the correct version is no longer available, e.g., the software producer has gone out of business, costly reconstruction or reverse engineering processes need to be employed to retrieve the relevant data.

To ease long-time storage, it is generally recommended to use open standards, for all files and documents, in the sense that no proprietary technology is included. Additionally, relevant procedures when handling these documents need to be implemented which assure compliance with open standards. Provided the hardware-access to the data is given, one can always implement software that provides access to these data.

For the purpose of digital preservation specific profiles of the PDF document standard

28. See <http://www.nooxml.org/argu-brief>; accessed August 28, 2011.

29. Note that in this document OOXML is defined as “under observation”.

30. For example, in Norway, all relevant documents in the public sector need to be stored according to the Offentlighetsloven.

31. There are other important issues connected with long-time storage, such as requirements to data privacy and security, as well as issues tied to DRM systems. The LongRec project, see http://www.nr.no/pages/dart/project_flyer_longrec; accessed August 28, 2010 and <http://research.dnv.com/longrec/>; accessed August 28, 2010 looked into challenges regarding long-time storage of documents.

32. See http://en.wikipedia.org/wiki/Data_storage_device; accessed August 28, 2011.

33. See <http://en.wikipedia.org/wiki/CAD>; accessed August 28, 2011.

have been standardised, denoted as *PDF/A*³⁴. The recent version PDF/A-2 (ISO 19005-2:2011) is based on the standard ISO 32000-1, but has a number of restrictions. PDF/A prohibits technologies that could cause changes with respect to the original document. Documents following this standard are not permitted to be reliant on information from external sources, such as font programs or hyperlinks. In addition, audio and video content, JavaScript, executable file launches, encryption, and certain compression methods are not permitted.

As Corrado (2005) points out, open access, open source, and open standards are important issues that can give benefits for libraries, including lower costs, better accessibility, and better prospects for long term preservation of scholarly works. Besides traditional documents, also metadata are important for digital preservation. The Open Archives Initiative³⁵ develops and promotes interoperability standards for the efficient dissemination of content. Their initiatives include both interoperability through metadata exchange and aggregation of web resources.

8.5 Patents and Standards

A *patent* is a set of exclusive rights granted by a national government to an inventor or their assignee for a limited period of time in exchange for the public disclosure of an invention.³⁶ Besides patents on inventions, there is a variety of other patents, such as *design patents* and *utility patents*³⁷ for certain types of protection rights. Previously, the term *patent* has also been used to grant certain rights to ownership and possession, and to grant the right to perform certain tasks.³⁸ In all these cases, a patent is a certificate granted by an authority that monopolises intellectual or other property rights or skills. Lately, specific types of patents for inventions have been developed, including software, chemical, medical, biological, and business method patents.

There is a conflict of interest between software patents and FOSS. According to Perens³⁹, *software patenting is generally hostile to Open Source, because patent holders require a royalty payment that isn't possible for developers who distribute their software at no charge*. Therefore, he works for reform of the patent system. Perens also reasons that *the software patenting system is broken and actually works to discourage innovation*, especially in connection to the increasingly used patenting practise of publicly funded universities. In short, patenting publicly-funded research will create injustice and economic inefficiency, since the taxpayers who indirectly funded the research might eventually get target of lawsuits. Thus, patenting works against the interest of the general public. Incorporating such patents in

34. See <http://en.wikipedia.org/wiki/PDF/A>; accessed September 1, 2011. Our thanks go to Arne-Kristian Groven who pointed out that specific standards for digital preservation have been developed.

35. See <http://www.openarchives.org>; accessed September 2, 2011.

36. See <http://en.wikipedia.org/wiki/Patent>; accessed August 28, 2011.

37. In German speaking countries the term *Gebrauchsmuster* is used as a "light-weight" patent for certain products; methods and processes cannot be protected by a *Gebrauchsmuster*.

38. In Norway, patents were given to sailors with the *sjømannspatent*, and to mountain guides with the title *patentfører*. Note that these patents both were connected to a right and a duty to perform these tasks.

39. See <http://perens.com/policy/software-patents/>; accessed August 28, 2011.

standards increases the problem, since standards are designed to agree on a common technology that is to be used by everybody, without any hindrance. Especially, this common technology should be possible to implement as FOSS.

8.6 Case Study: Video Codecs in HTML5

HTML5 (Hickson, 2011)⁴⁰ is a further development of HTML which forms the basis of today's web on the Internet. Pilgrim (2010) gives a comprehensible introduction into HTML5, and discusses its possibilities and challenges. One objective of HTML5 is to introduce support for media such as audio and video with specific tags for these. For video, the tag `<video>` has been introduced⁴¹. Besides the technical specifications, the previous draft proposal document suggested video codecs that are mandatory to be supported, while the current version is silent about this.

As previously outlined, the W3C does not allow patent-encumbered technologies to be part of their standards. Since the supported video codecs are mandatory to be implemented in all browsers without the need of plugins, the issue of patents tied to these video technologies is essential.

Multimedia content⁴² is usually delivered in a container format such as MPEG 4, Flash Video, Ogg, Audio Video Interleave (AVI), Matroska, or the newly developed WebM. These container formats contain both audio-, video- and metadata. The video-data are encoded in one of several codecs, such as MPEG-2, H.264, Theora, or VP8. Of these technologies, the H.264, Theora and VP8 are candidate technologies to be mandatory in HTML5. The HTML5 specification (Hickson, 2011) makes it clear, that the H.264 video format is not eligible to be supported mandatorily, since it is encumbered with patents.

The licensing conditions for H.264 are rather intricate, and both developers of software, as well as content distributors are subject to licensing payments administered by the MPEG LA⁴³ patents management. On the other hand, Theora and WebM are licensed royalty-free, and are not encumbered with any known patents which makes it possible to implement these codecs as FOSS. Note, however, that there always could be the risk of submarine patents⁴⁴ that could emerge in case the codec rises in popularity.

The different browsers that support HTML5 implement different selections of codecs. While browsers such as Firefox, Opera, and Chromium are in favour of Theora and WebM, others, such as Internet Explorer and Safari, choose differently⁴⁵, as do the dif-

40. The Editor's draft of this document, dated August 29, 2011 is available at <http://dev.w3.org/html5/spec/Overview.html>; accessed September 2, 2011. See also <http://en.wikipedia.org/wiki/HTML5>; accessed September 2, 2011.

41. A similar specification is used for audio with the tag `<audio>`. Unsurprisingly, for audio and other multimedia data types similar challenges as for video occur. However, for the sake of brevity we only illustrate the case for video. We refer to the book by Pilgrim (2010) for further reading.

42. We refer readers who seek deeper knowledge in multimedia formats to the advanced level course INF5081 at the University of Oslo (Leister, 2011).

43. See www.mpegla.com; accessed September 1, 2011.

44. See http://en.wikipedia.org/wiki/Submarine_patent; accessed September 1, 2011.

45. See <http://blog.chromium.org/2011/01/more-about-chrome-html-video-codec.html>; accessed

ferent mobile phones and tablets. Currently, it is not obvious how this discussion on which codecs are best supported will continue.⁴⁶ This discussion has not only an impact on openness regarding standards, but also on multimedia support for FOSS software, and on costs that arise at the content providers. Until an agreement is reached, content providers need to be prepared to store and offer video content using several types of encoding in parallel in order to reach the largest amount of users. Since also new developments, such as services for mobile devices are involved, the question of standards in multimedia formats has become a considerable factor for the further development of the information technology business.

References

- Edward M. Corrado. The importance of open access, open source and open standards for libraries. *Issues in Science & Technology Librarianship*, 42:1+, 2005. URL <http://www.istl.org/05-spring/article2.html>.
- Fornyings- og Administrasjonsdepartementet. Referanse katalog for IT-standarder Versjon 2.0. web, June 25 2009. URL http://www.regjeringen.no/upload/FAD/Vedlegg/IKT-politikk/Referanse katalogen_ versjon2.pdf. in Norwegian.
- Ian Hickson. HTML5 – a vocabulary and associated APIs for HTML and XHTML. W3C Working Draft, May 25 2011. URL <http://www.w3.org/TR/html5/>.
- Nah Soo Hoe. *Free/Open Source Software Open Standards*. Elsevier, 2006. URL http://en.wikibooks.org/wiki/FOSS_Open_Standards.
- Ken Krechmer. The principles of open standards. *Standards Engineering*, 50(6):1–6, 1998. URL <http://www.csrstds.com/openstds.html>.
- Ken Krechmer. Open standards requirements. *International Journal of IT Standards and Standardization Research*, 4(1), 2006. URL <http://www.csrstds.com/openstds.pdf>.
- Wolfgang Leister. INF5781: Multimedia coding and applications. advanced level course, University of Oslo, 2011. URL <http://www.uio.no/studier/emner/matnat/ifi/INF5081/>.
- Bruce Perens. Open standards, principles and practice. web pages, no date. URL <http://perens.com/OpenStandards/Definition.html>. last modified October 13, 2010.
- Mark Pilgrim. *HTML5: Up and Running*. Google Press, 1 edition, August 2010. ISBN 0596806027. URL <http://fortuito.us/diveintohtml5/>. available as ebook under the title “Dive into HTML5” on mirror site, CC-BY-3.0 License.

September 1, 2011.

46. See <http://lists.whatwg.org/htdig.cgi/whatwg-whatwg.org/2009-June/020620.html>; accessed September 1, 2011.

A Exercises

by Wolfgang Leister



In this chapter, we present exercises for the reader to apply the principles of FOSS, open data, open licenses, and open standards. The exercises are presented in case studies, where the reader is asked to elaborate solutions to given questions.

A.1 Exercise 1: FOSS and Licenses

The SME MyMoKey Inc., an upstart company with nine employees, has developed software that allows secure login to services from a mobile device. The application area for the technology includes secure login to banking applications as the main business case. The technology has been used by one major bank as an alternative login service, and has proven better security than the solutions offered by the banks today. However, due to already huge investments of the banks into the current login-solution (developed by a competitor), the banks' interest in MyMoKey Inc.'s product is low, and further sales cannot be foreseen.

MyMoKey Inc. has developed their solution for several years, and they have a patent on their technology. In order to raise the interest in their product, MyMoKey Inc. considers to provide an open source tool kit for their (potential) customers, so that these can implement connectors to the banking system. The source code would also show potential customers how the technology works. However, the provided source code would possibly show implementation details which the owners of MyMoKey Inc. rather would keep a secret.

MyMoKey Inc. has hired you as a consultant, and expects a report that covers the following deliverables:

1. Is FOSS a viable solution for MyMoKey Inc.?
2. Which license should MyMoKey Inc. choose, including a presentation of advantages and disadvantages?
3. Which licenses should be avoided?
4. Which impact does the granted patent have on this choice, and how should the patent be handled?
5. Which advantages and disadvantage does FOSS provide in this context?
6. Could MyMoKey Inc. draw advantages from development work by their customers, that are larger than the disadvantages? Which licensing issues need to be regarded in this case?
7. Would an open-core based business model be possible?

8. Is using FOSS of relevance regarding security and privacy issues of the application? Which FOSS license would be most favourable for supporting security and privacy?
9. Does the choice of an API have an impact on the license for the application?
10. Which impact does it have on the choice of a license when running the application as a service?
11. Which license considerations need to be done to use the Security Assertion Markup Language (SAML)¹?
12. To what extent can a FOSS license be used as a means of advertising for the product? Which mechanisms and business models would be appropriate?
13. Which requirements from the government about the choice of license need to be observed regarding banking applications? Which laws or regulations could apply?

A.2 Exercise 2: Open Data and Licenses

FastBikes Inc. is a company that provides delivery services of goods in an environmental-friendly way, by using bike messengers. Bike messengers are equipped with a GPS tracker that regularly updates his or her position. To facilitate both the bike messengers and FastBikes Inc.'s customers with the necessary information they decide to develop an app for both iPhone and Android platforms. The planned functionality includes showing locations of goods and bike messengers, as well as visualising ways with specific colour or shape based on current traffic data or other dynamically changing properties. This concept requires the access to geodata, modifying some of their properties, and rendering the modified data.

This concept requires more than plotting given coordinates from the GPS trackers on a pre-rendered map (slippy-map). The use of openlayers² is preferred due to the possibility to include map services from several providers. While map tiles are available and can be used from several commercial providers, licenses to access to the commercial geodata are too expensive in the required resolution. Therefore, FastBikes Inc. considers the use of OpenStreetMap data.

FastBikes Inc. has hired you as a consultant, and expects a report that covers the following deliverables:

1. Under which conditions can the app be implemented using OpenStreetMap?
2. Does the use of OpenStreetMap data have an impact on FastBikes Inc.'s own data? Is FastBikes Inc. required to publish own data? If this is the case, which data need to be published?
3. Which concepts for open content or open data can be applied in this case? Possibly, which exceptions from the copyright law could be applicable?

1. see http://en.wikipedia.org/wiki/Security_Assertion_Markup_Language; accessed July 23, 2012.
2. See openlayers.org; accessed May 3, 2012.

4. Bike messengers can possibly be identified on the map. Does this have an impact on how FastBikes Inc.'s data are published?
5. OpenStreetMap undergoes currently a license change from CC BY-SA to ODbL. Does this license change have an impact on licenses for FastBikes Inc.'s own data, or on the implementation of the app?
6. Does the choice of OpenStreetMap have an impact on the architecture of the software system?
7. Is the use of OpenLayers possible in this endeavour?
8. Can the app be implemented as FOSS? Which license would be recommended?

A.3 Exercise 3: Open Data and Licenses

You are appointed project manager for the development of an app that shall show the consequences of a climate change by showing temperature and climate data on a map. These values shown are based on real measurements at a given time; however, the measured temperature values are presented as modified values by using a simulation model that is considered to be patented by your employer.

The temperature and climate data are available as open data from The Norwegian Meteorological Institute (NMI)³. To present the data on a map, there are several alternative services that could be considered, such as Google Maps, Bing Maps, maps from the Norwegian Mapping Authority, OpenStreetMap, and map services that are used by other commercial actors. Additionally, it is planned to present information pages based on text from Wikipedia.

The app is supposed to be distributed in the app-stores for Android, iPhone, and Windows Phone. The price of the app in the app-store is not yet decided; alternatives include gratis availability in the app-store, distribution using a freemium model, or an app that is available at ca. NOK 25. While the basic use is supposed to be free of charge, it is planned to offer a subscription service for premium customers that will allow to access extra climate data such as air pressure, wind speed, and so on. The subscription service will be available at a monthly fee.

Your employer asks you to present the following at the next project meeting:

1. Is it possible to use the open data from the NMI as described? Discuss licensing issues which apply for the temperature data. The data from the NMI are presented after having been modified; does this have consequences for the licensing? Are there any considerations with respect to the attribution?
2. Does your employer's wish to patent the simulation model have any impact on the license of the resulting data? Can the simulation model be patented when open data are used?

3. See eklima.met.no; accessed December 14, 2013.

3. With regard to patenting the simulation model, what would be the outcome if the climate data would be available under the ODbL license?
4. Discuss the selection of the most suitable map service (Google Maps, Bing Maps, Norwegian Mapping Authority, OpenStreetMap, etc.) with advantages and disadvantages for each choice. Is it possible to combine the licenses or terms of use for the modified climate data, and the maps?
5. If you choose OpenStreetMap as map service, does the ODbL license have a viral effect on the modified climate data?
6. Does the presentation of text based on pages from Wikipedia have any impact on the licensing situation?
7. Which license would you recommend for the app, given the above requirements?
8. Which pricing policy in the app-stores would you recommend?
9. Does the plans for a subscription service for premium customers have any impact on the licensing of the data or the app?