Hassan Mehdi

Intellectual Property Rights - Alternative Models in the US and the EU

The call for the abatement, or reform, of the current system of intellectual property rights, has taken on a significant following, not least due to the sharp rise in global connectivity over the past years. Through use of the internet, various groups, within the US and the EU, have been attempting to facilitate general access to so-called "intellectual property".

A fundamental concept that underlies these efforts (often termed the "**Open Content**" movement) is the realization that currently valid intellectual property laws, lead to a reduction and restriction of research, creativity and ultimately, development, in most countries.[1] According to the proponents of "**Open Content**", such laws, and their interpretation, create something of an intellectual monopoly, reinforced by profit-making practices - which is arguably diametrically opposed to the *raison d'etre* of intellectual property rights *per se*.

Lawrence Lessig and Creative Commons

One manifestation of the "Open Content" idea, would be the **Creative Commons** licenses, introduced in the US in the year 2002. **Creative Commons** was developed by **Lawrence Lessig**, professor of law at Stanford University in 2001, thanks to a generous grant from the **Center for the Public Domain**, a private foundation, and is primarily financed by foundations, trusts, private donations and occasional state subsidies.

Over the years, with support from the Harvard Law School, the Stanford Law School, and various players in the American academic landscape,[2] **Creative Commons** evolved into the primary resource for those wanting to prevent their work - of any sort - from being limited by the automatically imposed restrictions of US copyright law.[3] The service **Creative Commons** offers, is to provide copyright-holders with tailor-made licenses which allow them to contractually waive certain aspects of their legally-guaranteed rights.

Motivations

Due to the ever-progressing expansion of copyright legislation, manifested in cases such as the "Sonny Bono Copyright Term Extension Act", the "Digital Millennium Copyright Act" as well as the **WIPO** "Berne Declaration"; people like **Lawrence Lessig** feel the additional impetus to redirect the development of copyright legislation back onto its constitutionally-conceived path - in this sense, **Lessig** is not advocating the abandonment of copyright laws, but rather a reform thereof.[4]

---

[1] Stiglitz, Joseph, *Geistige Rechte und Unrechte*, Der Standard, 13.,14.,15. August, 2005

[2] Creative Commons, *People*, Creative Commons <http://creativecommons.org/about/people> [August 29, 2005]

[3] US Copyright Office, *Copyright Basics*, US Copyright Office <http://www.copyright.gov/circs/circ1.html> [August 26, 2005]

[4] Lessig, Lawrence, „*Done right, copyrights can inspire the next digital revolution*", Wired <http://www.wired.com/wired/archive/12.11/larry.html?pg=2&topic=larry&topic_set=> [August 10, 2005]

An abandonment would probably only be counterproductive, as the **Creative Commons** scheme, as envisaged by **Lessig**, actually depends on enforceable copyright laws for the right-holder to exercise any degree of determination over his or her work. This may help to explain his positive stance with respect to the Google Print for Libraries project; he laments the copyright system in its current configuration, and hopes that Google's action will help trigger a process of reform.

Licensing

What **Creative Commons** offers can be viewed as the epitome of property rights, for the unrestricted disposal of one's creative output points to one's unrestricted ownership thereof. Those who support this notion - or the notion of rendering one's work to the largest possible audience - can find further support from **Creative Commons** in a variety of ways. Four such ways would be the different license templates they offer musicians, authors, directors or artists of any sort, with which to license their works:

> "i. Attribution licenses. Lets others copy, distribute, display, and perform copyrighted work — and derivative works based upon it — but only if they give credit in a way requested by the author.
> ii. Noncommercial licenses. Lets others copy, distribute, display, and perform the work — and derivative works based upon it — but for noncommercial purposes only.
> iii. No Derivative Works. Lets others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.
> iv. Share Alike. Allows others to distribute derivative works only under a license identical to the license that governs the original work."[5]

It must be noted though, that although Creative Commons (CC) licenses are legally recognized, **Creative Commons** as a company, merely provides the interface through which the general public's access to pre-existing legal practices is facilitated (for example, the waiving of certain aspects of copyright). **Creative Commons** is therefore not in a position to guarantee compliance with the license agreements, nor are they able to follow up on violations of the terms of agreement; this still remains the responsibility of the licensor.

Case study

In order to acquire a CC license, one must contact **Creative Commons**, which mostly entails visiting their website - seeing that their enterprise is structurally based in this medium. On the **Creative Commons** website, in an easily navigable environment, one finds under the sub-heading "Publish", a set of simple instructions on how to publish "open" content.
By means of four specific questions, **Creative Commons** then attempts to ascertain the particular nature of the license to be applied. The questions are:

> "*- Allow commercial uses of [the] work? (Yes/No)*
> *- Allow modifications of [the] work? (Yes/No/Yes, as long as others share alike)*
> *- Jurisdiction of [the] license (Selection of participating states)*

[5] Creative Commons, *Licenses Explained*, Creative Commons <http://creativecommons.org/about/licenses/> [August 5, 2005]

- […] format of [the] work (Audio, Video, Image, Text, Interactive)" [6]

One additionally receives the option of providing further details of the work, for example its title, a short description, the date of creation and suchlike. One can also circumvent the automated process and directly determine one's own license specifications - yet, the previously outlined process serves to facilitate the overall use of **Creative Commons** for the general public.

Were one now to answer the aforementioned questions as follows: "No" - "Yes" - "Austria" - "Text", one would receive a so-called "Attribution-NonCommercial 2.0 Austria" license, which would look like this: <http://creativecommons.org/licenses/by-nc/2.0/at/>.

It must be noted that CC licenses were developed primarily with regard to content that can be published and distributed on the internet - which is why one receives the final license almost exclusively in a web-specific, digital, format. Thus, as soon as one has completed the determination of the license agreement, one is guided to a further website, on which one finds replicable lines of programming code - intended to be embedded in the website of the licensor. The result represents nothing more than a sophisticated „©" sign, that contains, amongst other things, a draft of the terms of agreement in plain English, the legal text, as well as a machine-readable translation of the license.[7]

For material not distributed or published on the internet, the following text is provided to supplement any work, and point to its placement under CC license:

> „*This content is licensed under a Creative Commons Attribution-NonCommercial license. To view the license, please visit http://creativecommons.org/licenses/by-nc/2.0/at/ or send a letter to Creative Commons, 559 Nathan Abbott Way, Stanford, California 94305, USA.*"

i(nternational)Commons

Creative Commons also operates internationally, under the project title of "**iCommons**". The US licenses are not only valid the world over, [8] but are also continuously being adapted to the individual legislations of various nations, in order to achieve a similar status in those countries as in the American system.

In the "Frequently Asked Questions" section, **Creative Commons** had the following to say regarding the scope of their licenses:

> „*What legal standing will CC licenses have outside of the United States?*
>
> *We and our lawyers have worked hard to craft the licenses to be enforceable in as many jurisdictions as possible. That said, we can not account for every last nuance in the world's*

[6] Creative Commons, *Choose a License*, Creative Commons <http://creativecommons.org/license/> [August 29, 2005]
[7] Creative Commons, *Licenses Explained* Creative Commons <http://creativecommons.org/about/licenses/> [August 5, 2005]
[8] Creative Commons, *Baseline Rights*, Creative Commons <http://creativecommons.org/about/licenses/fullrights> [August 29, 2005]

various copyright laws, at least not given our current resources. We hope, as our resources and network of allies grow, to begin offering licenses designed for specific jurisdictions sometime in 2003. Please note, however, that our licenses contain "severability" clauses -- meaning that, if a certain provision is found to be unenforceable in a certain place, that provision and only that provision drops out of the license, leaving the rest of the agreement intact."[9]

What is remarkable, is the "severability" clause, implying that **Creative Commons** reserves the right to extract itself from any precarious contingency that may arise. The precise wording of the license agreement is:

"8. c.
If any provision of this License is invalid or unenforceable under applicable law, it shall not affect the validity or enforceability of the remainder of the terms of this License, and without further action by the parties to this agreement, such provision shall be reformed to the minimum extent necessary to make such provision valid and enforceable." [10]

Aside from Austria, **35 states** have further recognized the validity of CC licenses under their domestic law since their inception. A comprehensive list of **participating states** can be found at: <http://creativecommons.org/worldwide/>.

Showcases

Creative Commons is working hard at distributing its product throughout the world, some of the more prominent examples of the use of CC licenses would be: The **Public Library of Science**, (**PLoS**), codify all of their publications with CC licenses.[11] **BioMed Central** pursue a similar line and also affix CC licenses to their catalog.[12] The **British Broadcasting Corporation** (**BBC**) is currently determining the terms of use of its open content online media archive in terms of the CC model.[13] Lastly, the US rap group **Public Enemy** is now issuing their music, together with the appropriate CC license, free of charge from their website.[14]

„Copyleft"

Another project stemming from the US, is the **Free Software Movement**, led by **Richard Stallman**. **Stallman**'s efforts, aimed at moving computer software from private into public ownership, helped coin the term "Copyleft".

---

[9] Creative Commons, *Frequently Asked Questions*, Creative Commons <http://creativecommons.org/faq> [August 8, 2005]
[10] Creative Commons, *Österreichische Fassung Entwurf 1*, Creative Commons <http://mirrors.creativecommons.org/worldwide/at/translated-license.pdf> [August 26, 2005]
[11] Public Library of Science, *License*, Public Library of Science (PLoS) <http://www.plos.org/journals/license.html> [August 19, 2005]
[12] BioMed Central, *About Us*, BioMed Central <http://www.biomedcentral.com/info/> [August 31, 2005]
[13] Perry, Simon, *BBC Creative Archive licensing to be based on Creative Commons*, Digital-Lifestyles <http://digital-lifestyles.info/display_page.asp?section=distribution&id=1254> [August 19, 205]
[14] Eunjung Cha, Ariana, *'Creative commons' is rewriting rules of copyright*, The Detroit News <http://www.detnews.com/2005/technology/0503/16/tech-118329.htm> [August 8, 2005]

In 1985, **Stallman** founded the non-profit organization **Free Software Foundation**, (**FSF**), in which he developed his own licenses for the free distribution of software, eventually to become known as GNU or GPL licenses - and are still the most widely utilized "Open Content" licenses. The "Copyleft" idea, in this software-specific form, provided **Lawrence Lessig** with the foundation for the establishment of the generally-applicable Creative Commons licenses. A distinguishing feature of the "Copyleft" movement though, is that works designated as "Copyleft" material, may be reused and modified as one pleases, yet any derivative works must similarly remain in the "public domain".[15]

Global projections

With the exception of the aforementioned examples, GNU licenses operate similarly to CC licenses. Yet, the groups are easily distinguishable in terms of their global perspectives.

As opposed to **Creative Commons**, the **FSF** does not even presume to make their licenses globally valid; this is a far too risky and time-consuming process for them. The GNU website holds detailed accounts of this, and what becomes clear when reading it, is that the **FSF** is attempting to pre-empt potential misinterpretations of its licenses, by not even allowing these to arise in the first place.

Here a paragraph from their FAQ:

> „*If we were to approve, officially, a translation of the GPL, we would be giving everyone permission to do whatever the translation says they can do. If it is a completely accurate translation, that is fine. But if there is an error in the translation, the results could be a disaster which we could not fix. [...] once we have given everyone permission to act according to a particular translation, we have no way of taking back that permission if we find, later on, that it had a bug.*"[16]

Therefore, it seems as though the **FSF** is, for the moment, restricting its field of influence to the domestic sphere. There are though, several unofficial translations of GNU/GPL licenses, with the intention of universalizing them, and the **FSF** is currently considering whether to sanction official translations, but restrict their validity to individual states - much like the **iCommons** model - yet, they point to the fact that this process would take a substantial amount of time, and that they would require "sympathetic" and "capable" lawyers to complete the task.[17]

Examples of the use of GNU/GPL licenses

[15] Free Software Foundation, *What is Copyleft?*, Free Software Foundation <http://www.gnu.org/copyleft/copyleft.html> [August 26, 2005]
[16] Free Software Foundation, *Frequently Asked Questions about the GNU/GPL*, GNU <http://www.gnu.org/licenses/gpl-faq.html#GPLTranslations> [August 26, 2005]
[17] Free Software Foundation, *Frequently Asked Questions about the GNU/GPL*, GNU <http://www.gnu.org/licenses/gpl-faq.html#GPLTranslations> [August 26, 2005]

Apart from some software developers, such as: Netscape, Mozilla, Apache, Red Hat and Linux, which make use of GNU/GPL licenses, it should also be mentioned that the online-reference work, **Wikipedia**, functions under a GNU license.[18] This is logical, considering that the **Wikipedia** concept depends on perpetual, unrestricted, public modification of its content; for which a GNU license is highly appropriate.

Free Software Foundation Europe

Over the last couple of years, the **FSF** has expanded beyond US borders with the aid of like-minded institutions. To date, it has established three affiliates (in Germany, France and India) and plan to open one more in Latin America over the next years. It must be noted though, that these affiliates are independent of the American version of the **FSF**, in financial, legal and personal terms.[19]

Like its US counterpart, the **Free Software Foundation Europe** (**FSFE**) is a non-profit organization, established in 2001, with its headquarters in Germany. Their mission statement mirrors their intention to propagate the "Open Content" philosophy:

> "*Access to software determines who may participate in a digital society. Therefore, the freedoms to use, copy, modify and redistribute software […] allow equal participation in the information age.*
>
> *The vision of Free Software is one of a stable basis for freedom in a digital world -- both in an economic and socio-ethical context. Free Software is one important cornerstone for freedom, democracy, human rights and development in a digital society.*"[20]

EU involvement

Aside from their status as observer to the **World Intellectual Property Organization** (**WIPO**),[21] the **FSFE** is also involved in other areas pertaining to issues of intellectual property rights, for example, the ongoing legal proceeding surrounding the **Microsoft Corporation**'s non-compliance with EU conditions regarding the release of technical information, issued in January of 2005.[22]

---

[18] Wikipedia, *Wikipedia Copyrights*, Wikipedia <http://en.wikipedia.org/wiki/Wikipedia:Copyrights> [August 26, 2005]
[19] Free Software Foundation Europe, *About the FSFE*, Free Software Foundation Europe <http://www.germany.fsfeurope.org/about/about.en.html> [August 29, 2005]
[20] Free Software Foundation Europe, *About the FSFE*, Free Software Foundation Europe <http://www.germany.fsfeurope.org/about/about.de.html> [August 29, 2005]
[21] Free Software Foundation Europe, *Changing the World Intellectual Property Organization (WIPO)*, Free Software Foundation Europe <http://www.germany.fsfeurope.org/projects/wipo/wipo.en.html> [August 30, 2005]
[22] Hallenbach, R., *FSFE: Microsoft setzt EU-Auflagen nicht um*, at-mix.de <http://www.at-mix.de/news/443.html> [August 30, 2005]

A further issue with which the **FSFE** is occupied concerns the pending EU "Community Patent", being advocated by the business sector.[23] The **FSFE** lists several reasons why an EU-wide patent regulation would constitute a harmful measure, one of which is the fact that monopolies on abstract ideas could evolve, and result in the overall containment of innovation. Furthermore, the weakening of overall European competitiveness, due to the market dominance of large corporations, is highlighted.[24]

France

The EU itself has previously undertaken some research regarding the concept of "Free Software";[25] yet, these efforts have proceeded without any significant findings. Due to this, and the previously outlined fact that the conversion of US licensing schemes in Europe remains problematic, some EU states have launched their own "**Open Content**" initiatives, France being one example.

"CeCILL"

The French initiative, termed **CeCILL**, consists of a joint effort between three French research organizations: the **Commissariat à l'Energie Atomique** (**CEA**), the atomic energy commission; the **Centre National de la Recherche Scientifique** (**CNRS**), the national scientific research center; and l'**Institut National de Recherche en Informatique et en Automatique** (**INRIA**), the national institute for research of information technology and automation.

Established in July of 2004, **CeCILL** deals with the development of licenses similar to GNU/GPL, adapted to French law. Specifically, licenses that allow - as with **FSF** licenses - the replication, modification and distribution of CeCILL-licensed software.

A key development concerning the French project is that, on their account, **CeCILL** may be incorporated into **EU** law at a later stage.[26]

Germany

Digital Peer Publishing Nordrhein Westfalen, (**DiPP**), is currently Germany's main provider of "Open Content" licenses. **DiPP** produces **Digital Peer Publishing License**s, also referred to as **DPPL**, to further secure the continuance of "Open Content".

DPPL licenses are primarily intended for use with electronic journals, and thus provide an alternative to most software-based, European initiatives. Yet, one must take into account that the launch of DPPL licenses happened to coincide with the internationalization (including the German adaptation) of CC licenses, probably leading to an overall reduction of their application.

---

[23] EUROPA, *Patents, including the Community Patent*, EUROPA – Internal Market – Industrial Property <http://europa.eu.int/comm/internal_market/en/indprop/patent/> [August 26, 2005]
[24] Free Software Foundation Europe, *Softwarepatente in Europa*, Free Software Foundation Europe <http://www.germany.fsfeurope.org/projects/swpat/swpat.de.html> [August 30, 2005]
[25] European Working Group on Libre Software, *The Project*, European Working Group on Libre Software <http://eu.conecta.it/> [August 10, 2005]
[26] CeCILL, *Frequently Asked Questions*, CeCILL <http://www.cecill.info/faq.en.html> [August 26, 2005]

The count in July, 2005, revealed that only 10 German journals had employed DPPL licenses,[27] in stark contrast to the key US players, **PLoS** and **BioMed Central** (which alone issues 130 journals) utilizing CC licenses for all of their publications.[28]

The relative containment of DPPL licenses is proof that CC licenses meet all the demands made by "Open Content" publishers. Although some uncertainty persists as to the applicability of CC licenses in the international sphere, most publishers outside the US seem nonetheless to rely on **Creative Commons**.[29]

The international discourse

The larger frame in which these initiatives are situated, is marked by constant development and debate. The issue that invariably comes to the fore though, is that of the apparent profit-maximizing behavior by the "developed" world, beholden to private-sector interests.

TRIPS

The **World Trade Organization** (**WTO**) initiated a great deal of controversy in 1994 by establishing the agreement on „**Trade-Related Aspects of Intellectual Property Rights**", or **TRIPS**. TRIPS set forth minimum standards for the protection of intellectual property in the 148 member states of the **WTO**, and inevitably led to the expansion of several national copyright and patent regulations.

The introduction of such standards was seen by many as counterproductive, especially in view of "third world" development.[30] In an oft-cited example, stricter patent laws led to a rise in prices of AIDS-combating drugs in several African nations, leading to government paralysis in tackling the pandemic.

WIPO

Since 1967, the **World Intellectual Property Organization** (**WIPO**) supervises the **Berne Convention** on the protection of literary and artistic works, signed in 1886. Since then, over 176 states have joined the convention, which has established it as one of the cornerstones of legally codified intellectual property rights and arguably the inspiration for consequent measures, such as the **WTO TRIPS** agreement, and the derivative, often stricter, national adaptations of such measures.

In the **US**, two examples of the ongoing trend towards an expansion of intellectual property rights would be the "**Sonny Bono Copyright Term Extension Act**" and the "**Digital Millennium Copyright Act**". In the **EU**, the trend is manifested in regulations such as the **EU**

[27] Euler, Ellen, *Licences for open access to scientific publications – a German perspective*, INDICARE <http://www.indicare.org/tiki-read_article.php?articleId=117> [August 26, 2005]
[28] Science Commons, *Frequently Asked Questions*, Creative Commons <http://sciencecommons.org/resources/faq> [August 31, 2005]
[29] Euler, Ellen, *Licences for open access to scientific publications – a German perspective*, INDICARE <http://www.indicare.org/tiki-read_article.php?articleId=117> [August 26, 2005]
[30] Stiglitz, Joseph, *Geistige Rechte und Unrechte*, Der Standard, 13.,14.,15. August, 2005

Copyright Directive, which, due to a rise in public awareness, is currently only being implemented by **Austria, Denmark, Germany, Greece, Ireland** and the **United Kingdom**.[31]

A stricter national adaptation of such regulations, due to bilateral agreements and, or, national legislation should also be taken into consideration. For example, in 1993, the **EU** already decided to extend its standard copyright term to a duration of 70 years, whereby the **Berne Convention** only calls for a 50-year term.[32] In the **US**, stricter interpretations of copyright law have been met with a certain degree of reserve, although generally, a more stringent interpretation of inter-national provisions on the national level appears to be the norm. This is also mirrored throughout the developing world, in the cases of **Botswana**, **Ecuador**, **El Salvador** and **Uganda**, who all signed on to the so-called **TRIPS-Plus** measures.[33]

The United Nations

The **UNESCO** "Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions", more commonly known as the "Convention on Cultural Diversity, dealt directly with the problem of the worldwide protection of forms of intellectual property. In the course of various conferences and meetings, held between December of 2003 and July, 2005, a fundamental question came to light around which a great deal of heated inter-governmental debate took place, namely: whose cultural diversity this convention is seeking to protect.

The primary point of contention was whether the final draft of the convention would be so structured, as to allow external influences to take hold on a national culture, or not - and in both instances, to what extent. A limitation on the global influence exercised by multi-national corporations, backed by an international agreement, was clearly not in the interest of some negotiating parties.

In this sense, the **US** (supported by different delegations, depending on the issue) sought to ascertain that the convention recognized that the strict protection of intellectual property rights is a key requirement for the free development of cultural industries. Yet, the majority of states in attendance insisted that fragile forms of national culture - especially those of the developing world - would not be able to withstand the forces of an expanding market, and would fall prey to a rigidly enforceable global intellectual property rights regime.

Negotiating strategies

The preliminary drafts of the convention contained numerous references to the protection of intellectual property and the necessity to curb digital piracy - yet, throughout several rounds of negotiations, the number of such references in the main body of the convention, was reduced

---

[31] Association Electronique Libre, *EUCD Status*, Association Electronique Libre <http://wiki.ael.be/index.php/EUCD-Status> [September 6, 2005]
[32] European Broadcasting Union, *Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights*, EC <http://www.ebu.ch/CMSimages/en/leg_ref_ec_directive_copyright_duree_protection_291093_tcm6-4276.pdf> [September 6, 2005]
[33] Trade, Human Rights, Equitable Economy, *Country Briefings*, Trade, Human Rights, Equitable Economy <http://www.3dthree.org/en/page.php?IDpage=23&IDcat=5> [September 6, 2005]

from 16 to none. This was mainly due to the efforts of the **Brazilian** delegation, as well as an initiative launched by the civil-society advocacy group **Communication Rights in the Information Society**, (**CRIS**), which was co-signed by over **100 non-governmental organizations** - several of which hold "status-A" advisory powers in the **UNESCO** itself.[34] The resulting drafts were thus better equipped to deal with the requirements of developing nations, but triggered substantial discontent from the **American** delegation.

The fact that the **United States** remain skeptical about **UNESCO**'s viability, can be gleaned from a revealing April 15th, 2005 press briefing issued by the **US State Department** on the convention. This attitude was also discernable from their conduct at the various conferences, where they insisted on "*regularly putting their reservations and objections on record*"[35] and to disagree with the general proceedings of the conference - which, as opposed to the conventional use of compromise, preferred to put most contentious issues to a vote. Their disaffection was most prominently displayed by their early exit from the conference room and consequent non-attendance of the conclusion of the third session of the inter-governmental meeting of experts.

A question of priorities

In a position paper on the convention,[36] the non-governmental organization **International Network for Cultural Diversity** (**INCD**), issued what they saw as some key guidelines to secure the true protection of cultural diversity. Their primary recommendation was as follows:

> "*1. The status of the Convention must be equivalent to the trade and investment agreements and must prevail where the Parties are considering cultural policies and cultural diversity.*"[37]

This crucial point provides the standard by which the effectiveness of the final draft of the convention will be measured. The international-legal predominance of this agreement could enable nations to enact unrestricted measures to secure their culture - in the face of any other (trade-)agreements they may have concluded. A subordination of this agreement, on the other hand, would not provide sufficient legal support to allow, or even enforce, measures designed to favor national industries.

The final draft of the convention falls under the latter category. **Gary Neil**, executive director of the **INCD**, notes that the final draft lacks the enforceability to extricate the cultural industries

[34] Communication Rights in the Information Society, *CRIS Statement regarding Intellectual Property Provisions in the draft Convention*, Communication Rights in the Information Society <http://www.mediatrademonitor.org/node/view/180> [August 26, 2005]
[35] Mairitsch, Mona, Abschlussbericht betreffend der UNESCO Konvention zum Schutz und zur Förderung der Vielfalt kultureller Ausdrucksformen, Vienna, June 17, 2005
[36] International Network for Cultural Diversity, Position Paper, International Network for Cultural Diversity, November 9, 2004
[37] International Network for Cultural Diversity, Position Paper, International Network for Cultural Diversity, November 9, 2004

from existing and prospective trade agreements,[38] to the probable detriment of their long-term development.

Summary

Although the initial drafts displayed a tendency towards the inclusion of intellectual property rights language, a gradual reformulation of various sections allowed for a more liberal interpretation of international law, resulting in the possibility of the inclusion of "Open Content" initiatives.

The lack of enforceability though, poses a significant obstacle, in that it undermines the overall effectiveness of the convention as a whole.

In conclusion

It must be noted that most EU-backed initiatives in the "Open Content" sphere almost exclusively revolve around the software industry, and thus cannot act as an alternative to schemes such as the American CC licenses. Creative Commons, with their global outlook and nigh-universal applicability, appear well-positioned to further determine the future of the "Open Content" movement.

What the future of "Open Content" on the global level may look like is as of yet unclear. The outcome of the "Convention on Cultural Diversity" can be viewed as a setback, but numerous organizations and initiatives endeavor to keep the topic in the public discourse and are intent on making progress in this area.

References

US State Department, US State Department public briefing on the UNESCO Convention on Cultural Diversity, April 15, 2005

Association Electronique Libre, *EUCD Status*, Association Electronique Libre <http://wiki.ael.be/index.php/EUCD-Status> [September 6, 2005]

BioMed Central, *About Us*, BioMed Central <http://www.biomedcentral.com/info/> [August 31, 2005]

CeCILL, *Frequently Asked Questions*, CeCILL <http://www.cecill.info/faq.en.html> [August 26, 2005]

Creative Commons, *Licenses Explained*, Creative Commons <http://creativecommons.org/about/licenses/> [August 5, 2005]

Creative Commons, *People*, Creative Commons <http://creativecommons.org/about/people> [August 29, 2005]

Creative Commons, *Baseline Rights*, Creative Commons <http://creativecommons.org/about/licenses/fullrights> [August 29, 2005]

[38] International Network for Cultural Diversity, *INCD Position on New UNESCO Treaty*, International Network for Cultural Diversity, June 3, 2005 <http://www.incd.net/docs/INCDPosition.htm>

Creative Commons, *Frequently Asked Questions*, Creative Commons <http://creativecommons.org/faq> [August 8, 2005]

Creative Commons, *Frequently Asked Questions*, Creative Commons Deutschland <http://de.creativecommons.org/faq.html> [August 19, 2005]

Creative Commons, *Österreichische Fassung Entwurf 1*, Creative Commons <http://mirrors.creativecommons.org/worldwide/at/translated-license.pdf> [August 26, 2005]

Creative Commons, *Choose a License*, Creative Commons <http://creativecommons.org/license/> [August 29, 2005]

Communication Rights in the Information Society, *CRIS Statement regarding Intellectual Property Provisions in the draft Convention*, Communication Rights in the Information Society <http://www.mediatrademonitor.org/node/view/180> [August 26, 2005]

EUROPA, *Patents, including the Community Patent*, EUROPA – Internal Market – Industrial Property <http://europa.eu.int/comm/internal_market/en/indprop/patent/> [August 26, 2005]

European Working Group on Libre Software, *The Project*, European Working Group on Libre Software <http://eu.conecta.it/> [August 10, 2005]

European Broadcasting Union, *Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights*, EC <http://www.ebu.ch/CMSimages/en/leg_ref_ec_directive_copyright_duree_protection_291093_tcm6-4276.pdf> [September 6, 2005]

Free Software Foundation, *What is Copyleft?*, GNU <http://www.gnu.org/copyleft/copyleft.html> [August 26, 2005]

Free Software Foundation, *Frequently Asked Questions about the GNU/GPL*, GNU <http://www.gnu.org/licenses/gpl-faq.html#GPLTranslations> [August 26, 2005]

Free Software Foundation Europe, *About the FSFE*, Free Software Foundation Europe <http://www.germany.fsfeurope.org/about/about.de.html> [August 29, 2005]

Free Software Foundation Europe, *Changing the World Intellectual Property Organization (WIPO)*, Free Software Foundation Europe <http://www.germany.fsfeurope.org/projects/wipo/wipo.en.html> [August 30, 2005]

Free Software Foundation Europe, *Softwarepatente in Europa*, Free Software Foundation Europe <http://www.germany.fsfeurope.org/projects/swpat/swpat.de.html> [August 30, 2005]

International Network for Cultural Diversity, Position Paper, International Network for Cultural Diversity, November 9, 2004

International Network for Cultural Diversity, *INCD Position on New UNESCO Treaty*, International Network for Cultural Diversity, June 3, 2005 <http://www.incd.net/docs/INCDPosition.htm>

Public Library of Science, *License*, Public Library of Science (PLoS) <http://www.plos.org/journals/license.html> [August 19, 2005]

Science Commons, *Frequently Asked Questions*, Creative Commons <http://sciencecommons.org/resources/faq> [August 31, 2005]

Trade, Human Rights, Equitable Economy, *Country Briefings*, Trade, Human Rights, Equitable Economy <http://www.3dthree.org/en/page.php?IDpage=23&IDcat=5> [September 6, 2005]

US Copyright Office, *Copyright Basics*, US Copyright Office <http://www.copyright.gov/circs/circ1.html> [August 26, 2005]

Wikipedia, *Wikipedia Copyrights*, Wikipedia <http://en.wikipedia.org/wiki/Wikipedia:Copyrights> [August 26, 2005]

Contanza-Chock, Sasha, *Update on the intellectual property language in the UNESCO treaty*, Media Trade Monitor <http://www.mediatrademonitor.org/node/view/238> [August 26, 2005]

Euler, Ellen, *Licences for open access to scientific publications – a German perspective*, INDICARE <http://www.indicare.org/tiki-read_article.php?articleId=117> [August 26, 2005]

Eunjung Cha, Ariana, *'Creative commons' is rewriting rules of copyright*, The Detroit News <http://www.detnews.com/2005/technology/0503/16/tech-118329.htm> [August 8, 2005]

Hallenbach, R., *FSFE: Microsoft setzt EU-Auflagen nicht um*, at-mix.de <http://www.at-mix.de/news/443.html> [August 30, 2005]

Lessig, Lawrence, *Done right, copyrights can inspire the next digital revolution*, Wired <http://www.wired.com/wired/archive/12.11/larry.html?pg=2&topic=larry&topic_set=> [August 10, 2005]

Mairitsch, Mona, *Abschlussbericht betreffend der UNESCO Konvention zum Schutz und zur Förderung der Vielfalt kultureller Ausdrucksformen*, Vienna, June 17, 2005

Perry, Simon, *BBC Creative Archive licensing to be based on Creative Commons*, Digital-Lifestyles <http://digital-lifestyles.info/display_page.asp?section=distribution&id=1254> [August 19, 205]

Stiglitz, Joseph, *Geistige Rechte und Unrechte*, Der Standard, 13.,14.,15. August, 2005