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Copyright & Open Source



How can you balance the rights of the author with the rights of open source?



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Copyright

Form of property-

can be sold, licensed, inherited, and stolen.

Protects the *expression* of ideas in the *recorded* form

Arises naturally as soon as a copyright work is created

No need to register

Most forms last for authors life +70 years!



What items does copyright law protect?

It protects certain types of works:

- Literary works (written works e.g. a book, computer code).
- Dramatic works.
- Musical works (e.g. a recording of a song).
- Databases (15 years)
- Artistic works (e.g. a photo, painting, sculpture).
- Sound recordings
- Films (e.g. a recording of a moving image).
- Broadcasts (e.g. a transmission of a television programme) (50 years).
- Typographical arrangements (25 years)

Copyright gives the author power

It protects the author's right to say what can be done with their work, including:

- Who can copy it.
- Who can make copies available to the public.
- Who can rent or lend it.
- Who can perform it or show or play it to the public.
- Who and how it can be adapted.
- Who can translate it.

Moral Rights

Right to be identified as the author.

Right to object to derogatory treatment of their work.

Must be asserted.

May not arise in works created in the course of employment.

Cannot be waived, licensed or assigned.

Ownership

Author/ creator = owner of the copyright

Unless there is a contract in place which says otherwise:

- Contract of employment

- University handbook

- Funding

- Collaboration agreement



Who is an Owner?

Person who writes something, presses record, saves the file, captures the image, holds the paint brush.

Teamwork/ collaborations= multiple authors & multiple owners.

Academic vs copyright debate?

Editors/ reviewers/ contributors that do not 'write' *may* not be authors/ owners.



Open Source

Licensing mechanism

Permissions granted by an owner to user for them to do things that only the owner can do.

Licences to the world

Licences are already attached to the work

Users follow the terms without the need to contact the owner



Open Source

Can be exclusive, non-exclusive, sole....

Sits alongside other rights of owner.

Ownership and moral rights are unaffected.



Licence choices

Many available

GNU, GPL, MIT, BSD...

All will carry own clauses which enable or restrict certain uses

Some are interoperable, others are not.

Some allow commercial uses, others do not

Lots of comparison grids etc available

Creative Commons- not recommended for software.



Balance



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3 way balancing act

Public

to enable public access to art, science, etc.

“to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

US Constitution, Article 1, s. 8, Cl 8.



3 party balancing act

Authors/ creators/ owners

- protect their original creative works

- prevent copying

- ensure appropriate reward and recognition

Publishers

- protect investment

- ensure appropriate reward and recognition



Public rights

Certain defences in law that enable public to use materials without Permission

Not rights- Uncertain- Interpreted by case law

Limited in scope- only apply to certain acts (in UK law)

Under pressure- owner/ publisher pushback.



Public Domain

Copyright is finite- when it expires anyone can use the work for any purpose without permission, or acknowledgement.

But...

New editions of works might create a fresh 70 year term.



Does pushing everything to open source
negate the intellectual property of the work a
researcher creates?



OS Vs IP

Ownership is not impacted by granting of FOSS licences.

FOSS licences are the owner's choice

(NB- it may be a requirement of funding)

Failure to follow licence terms= licence breach = copyright infringement
action to enforce owners' rights can be taken



OS Vs IP

Most, if not all, require attribution/ reference back to original author/ owner

Derogatory treatment is not permitted by a FOSS licence.

Reuse of another's' work does not equal an endorsement by either party.



Final thoughts

Licences supplements legal rights.

Ownership is not impacted by FOSS Licensing.

Owners/ authors rights remain protected.

Moral rights are retained.

Funder requirements may limit owners' choice.

Copyright law retains 'balance' to protect interests of all parties.



Thanks

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<https://intranet.birmingham.ac.uk/as/libraryservices/library/copyright/index.aspx>



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