# Concept of Copyleft: Free Software, Creative Commons and Open Source

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This article explores the evolving landscape of copyleft licensing in the digital era, highlighting its vital role in preserving intellectual freedom, collaboration and the open sharing of knowledge and creativity. Every organized creative venture is a result of the core thinking of an idea which took the shape of some kind of derivation giving the end result. Propounded by the theory of property and ownership, copyleft uses a piece and gives a fair share to its creators. Several information models have underpinned the concept, as it originally emerged as a licensing strategy within the broader framework of derivative creation cycles. In today's digital landscape, where we seek creative solutions to satiate our ever-growing appetite for innovation and technology, it becomes imperative to thoroughly examine this concept and its practical applications.

Measuring by the milestones, creativity is expanding its domain through different instruments today. Internet is a global faith within which social, economic and technological myriad forces interplay to prove its standardization. In the context matter of Intellectual property, it is the information which should be given recognition in the category of patents; it is the application of ideas and in copyright, expressions. Novice ideas and expressions are never a cloth from a fixed fabric; instead they are the stiches from vast inputs of information standing on the 'shoulder of giants'.[1] As a part of intellectual mapping and upliftment, information contributes in both the input and output. And since, the outlook of information includes intellectual development; the existence of 'public domain' comes into the picture. Our intellectual mapping and evolution depends on the quality and quantity of information which we choose to feed. However, it is very important to possess an enriched public domain.

The law of intellectual property deals with non-rivalrous goods intangible in nature and having said that creativity and invention is a profoundly dynamic process.[2] As far as of now, the proponents of intellectual property are on mutual ground; (a) Incentives are the basis of Intellectual property (b) To ensure the sufficient growth of information, such kind of incentives are required (c) An enriched source of information plays a role in the reduction of further development costs. (d) To promote the progress.[3]

Copyright has been an internationally available instrument to protect the artistic endeavours of people, while also granting certain rights to the public to use a creation for their benefit. The concept of copyleft came into the picture to give liberty to a certain extent so that general public could benefit from such software which could prove to be beneficial in the bigger picture. It is a licensing scheme in which an author surrenders some of his/her rights under the law of copyright. Not everything comes into the domain for public use.

To arrive on the theory and scenic applications of copyleft, let's look into the types of taxonomy of information. In relation to the context of copyright, derivative works are the paradigmatic forms of types of information.[4] To start with, Type I - Core information is created; the actual work of creativity capable of authorship in the field of copyright, the actual invention in the context of patent. Type II - Directly related information, that is in some way is derived from the underlying creation. Type III - Indirectly related information associated with a class of information which in some way qualifies for being 'derivative' but somehow falls outside the domain of laws of intellectual property.

Type I and Type III builds a relationship which is normally indistinct and been removed so as to preclude the appropriation by creator of Type I. To

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summarize, Type III is the 'open' information which is available for massive use as a natural consequence of creating Type I information. Conveying it through the spirit of copyright, the invention of steam engine suggested for the utility of consideration of rotary motion as a mechanical function. In the copyright-oriented vein, consider the creation of a copyrighted ledger of booking defining a particular accounting technique.[5]

## Concept of Copyleft

Copyleft is a methodology applied to make a program free or any other work for that matter. It also requires all modified versions or extended versions of any work to be free as well. Copyleft mechanism is ensured by the simplest method; make available the work in the public domain, uncopyrighted.[6] By falling in the public domain, users all across get the freedom to share the program and their own improvements upon it, freely. However, there is possible limitation in this idealistic functioning. There arises a fair chance of some individuals acquiring the free software, making certain changes or modifications or adding extensions to it and then making it proprietary.

The GNU project aims at providing the entire public the freedom to access, redistribute and change the GNU software. If the abovementioned possibility occurs then the users multiply, however, those users will not have the core freedom because of receiving propitiated version of the software. Therefore, GNU software has not been put into the public domain but has been copylefted instead. Copyleft postulates that anyone can redistribute the software, with or without the modifications, and must pass along the core freedoms to further copy and change it. The major guarantee that Copyleft gives is the freedom to each and every user.[7]

A program is copylefted when firstly, the code is stated to be copyrighted and then the distribution terms i.e. the freedoms are added to it which acts as a legal instrument, giving everyone the equal freedom to use, modify and redistribute, keeping the distribution terms unchanged. This renders the code and the terms inseparable. Therefore, in Copyleft, the copyright is used to give the freedoms and not encroach them unlike usual copyright mechanism. Copyleft does not abandon the copyright because doing so would render the former improbable. Copyleft is just the means of using the copyright on a program. The 'left' in the Copyleft isn't a symbol referring 'to leave' but merely means the opposite or inverse of 'right'. Thus, Copyleft requires the notice of copyright and has no symbol [inverted 'c' in a circle] of its own.

## GNU General Public License

The big world of freedom of software begins with General Public License (GPL, GNU or GPL), a license for a free software guaranteeing users the liberty to study, run, modify and share the software. Originally drafted by Richard Stallman, he belonged to Free Software Foundation (FSF) for GNU Project giving the program recipients rights of Free Software Definition. It is a license moderating that derivate work can be distributed under the terms of same license.

### Software Freedom

Free software represents an abbreviated language concentrating on the pertinent parts to the license. The user has access to certain versions of freedom such as freedom to run the program on purpose, studying the working of the program, distributing the copies of modified version and redistributing the copies. The emphasis on 'particular user' is important to consider what kind of freedoms being given in the license which applies to the source code. It is only completed without imposition on how these freedoms are being exercised. Granting these for activities which are not commercial but not permitting them for the commercial ones are not considered free.[8]

To make software free, there are mechanisms that enable the software to be free which are being designed as an answer to the existing proprietary software.[9]

### Proprietary Software

Another name for 'non-free' software which defines the freedom with restrictions they exist only of the copyright law. A useful description by FSF giving the various types of software with their relation to one another. In addition to that, the distributors of the software modify it on a practical note by specifically distributing only the binary code and keeping source code to themselves belonging to the secret of software.

### Freedom to 'Run'

The first feature to begin with, it permits the access to any conceivable use of the software. It also means if a user has found an innovative use for a specific program which could not have been predicted in the

normal course, then it should permit the conceivable use. By the general course of law in most of the countries, it is the holder of copyright who gets to decide that how the work may be controlled or modulated by others including the part of redistribution. In most cases, it is the author who takes such decisions.

### Freedom to 'Copy' and 'Share'

Achieving the variety, it is involved in the promotion of a work to remove the basic dilemma of the age of software which involves choosing between the companionship by giving away the program copy to the friend who is finding software to suit his needs or to ethically obey the license. Sharing among softwares can only be promoted when there will be licenses considering and respecting the software freedom.

### Freedom to 'Change' and 'Modify'

Known to be most relevant among all, user has the right to modify, change, improve and adapt the software to suit themselves. Along with that, they can design the script to install it and have access to the source code. In this, the ones who get direct benefit from such freedom are the programmers. Though, this proves to be a consequential element to the users who are not playing the role of programmers.

### Freedom to Share the 'Improvements'

When something good is modified and made better to make it a useful innovation, it should be shared among the fraternity to encourage them to resort to such techniques. And the business of improvement and modification can't be completed without having the license to share it. Formed on the principle of altruistic sharing, this software community, it is the reason why free software flourishes in the public domain.

Software freedom also provides access to any kind of entity for the distribution of modified versions of free software. Many programs possess a standard version which has been made accessible from the primary developers of the software. Many who have the access to software also have the *freedom to work*.

### In the Public Domain

About the nature of software freedom, they come into the public domain when the author automatically copyrights the software when it is fixed in a tangible medium. In the software terminology, it means converting the software source code into a file. The

law of copyright is the system allowing for many software restrictions in answer being prohibiting modification, copy and the redistribution, removing it from the system generally yields the freedom for its users. To be honest, the software doesn't get any license in the public domain.

## Creative Commons

In the league of several copyright licenses to make accessible the free distribution of any other or derivated copyright network. When an author decides or wishes to give the right to people to use, share create again upon an available creation, the license comes into the picture. It gives flexibility to an author and provides protection to public who wants to use or redistribute subject to formation of the author, the concern arising out the scene of infringement of copyright. As long as they comply with the terms and conditions given clearly in the license by which author promotes and distributes their work.

There are various types of CC licenses differing by many combinations framing the distribution terms. Under the license of Creative Commons, the work is protected by the copyright law which is applicable which gives them the permission to be applied to all the works falling under the domain including articles, music, movies, books, plays, photographs etc. The license doesn't apply in terms of software. To begin with, there are four kinds of licenses;

### Attribution

'Free licenses' abiding by the four liberties which includes copy, perform, distribute and display, making the work derivative and remix only on the basis if author or licensor gets the credits in the specified manner.

### No Derivative Works

Licensees shall copy, perform, display and distribute only the verbatim copies not the remixed or derivative ones. They are not free, neither have they allowed for the software modification. Being an agglomerative provision (any modification is can be modified) allowing the dynamic set up of communities to which one can only be in one by being an active participant in the process of proliferation.

### Non-Commercial

They have access to free use but only for commercial purposes. They can follow the liberty of copy, distribution, and share and perform only on the

condition if they do it for non-commercial purposes. Therefore, copyleft may be free but it comes with a charge. As quoted by Stallman, 'free as in free speech, not free as in free beer'.

### Share-alike

Distribution of derivative works may be permissible by the licensees only under the feature of conditional license to the one that regulates or governs the original work. Including modification and free use, the nature of conditions upon the agreement to four kinds of freedoms.[10]

All of the licenses forming the 'baseline' including everything of right to distribute the copyrighted work. The two principles of copyleft "share and share alike" and "reciprocity" gives protection to the developers who avoid facing a situation in encountering a 'prioritized' competitor of the project and users being certain that they will have access to four of the freedoms of software not only in the current version of their usage but also with the probability of future improved versions. Much like our ideas for what a computer might do in the capabilities of its applications, it should be subject to implementation by a program actually doing the job, so that copyleft should also be implemented in a strong and concrete legal structure.

### Open Source

Another type of license for the software of computer which allows the design, source code or its blueprint to be used, shared and subject to modification under the designated terms and conditions permitting the companies and end users to review and modify all of the above mentioned to suit their own criteria or for their troubleshooting needs. It is subject to some restrictions specifically in relation to expression of respect to software origin in particular to the condition of preserving the author's name and the copyright statement of the code, redistribution of the software under the same license. Besides having a political focus from those who refer such software as 'free software' are often concentrated on the side issue.

The Open Source Initiative (OSI) based on their definition regards such kind of licenses as inconsistent with their 'Open Source Definition'. Also, the term 'open source' is quite mind boggling owing to the reason that it appears as if only the 'freedom to study' which is just a feature of subset of the four freedoms.

There is a sound existence of linguistic battle between copyleft and copyright. The features of copyleft contribute to negative imaging of the software. When software is made completely available to the public to accord to their own terms, it has a fair chance of landing up in untrustworthy hands that may modify and sell it without the source code. It will lead to the development of proprietary software.

Copyleft pragmatically uses the ownership in the spirit of its exclusiveness as a shield to keep exclusion out of it. It might appeal to the mass that it is convincing to make the production of copyright produce the opposite effects. Besides the backlash, we find the broad domain of the 'software freedom' in which there is choice for how it should be run, share, improve and distributed. There are types of information which explains the cycle of idea as a knack turning into an inspiring piece and forming a derivative work. Any author or developer of software has the freedom to choose the public domain to recede his rights to the public or also he may choose to preserve it only for himself in the concept of private ownership the access of what they have formed and developed or to attach the license to their creation keeping the best in interest. Where there is scope for derivation, there is space for the opinion and their respective differences which should be given consideration. By attaching a free nor free license to their invention, they exercise their option which has been granted to them by the law of copyright.

With the notion of creation begets creation and more invention, copyright is not constituted by the creative act but by the society. All that is desired in the sense is recognition. To conclude, copyleft doesn't portray itself prognostic ally in the domain of intellectual property. However, it does leave a trace of the certain limitations of a view turned theory making a point that sufficient use could be made out of it.

### Conclusion

In conclusion, the evolving landscape of intellectual property and information management is a complex and dynamic arena. The interplay of creativity, copyright, copyleft, and open-source principles illustrates the multifaceted nature of this domain. The choices made by creators, whether to protect their work through traditional copyright or embrace the principles of copyleft and open-source, carry significant implications for the accessibility and development of intellectual property.

The concept of copyleft, while not offering a clear-cut solution, highlights the importance of balancing the rights of creators with the broader interests of society in fostering innovation and creativity. It is a reminder that the path to intellectual progress is not fixed but adaptable, and that the choices made by creators in terms of licensing and access play a pivotal role in shaping the future of intellectual property. In this ever-evolving landscape, it is recognition, adaptation, and thoughtful consideration of the implications of our choices that will continue to define the boundaries and possibilities within the realm of intellectual property.

## References

1   Scotchmer S, Standing on the shoulder of giants: Cumulative research and the Patent Law, *Journal of Economic Perspectives*, 5 (1991a) 29.

2   Mansfield E, Industrial Research and Technological Innovation, *W. W. Norton Publishing Co.* 1968.

3   Landes W M & Posner R A, An economic analysis of Copyright Law, *Journal of Legal Studies*, 18 (2) (1989) 325.

4   *Midway Mfg. Co.* v *Artic Int'l,* Inc 704 F. 2d. 1009,1013.

5   *Baker* v *Selden*, 101, U.S 99 (1879).

6   Maheshwari A & Agarwal K, Copyleft: Copying done right, *Indian Journal of Law & Public Policy*, 4 (1) 2017.

7   Heffan I V, Copyleft: Licensing collaborative works in the digital age, *Stanford Law Review*, 49 (6) (1997) 1487.

8   Hass D A, A gentlemen's argument - Assessing the GNU general public license and its adaptation to Linux, *Chicago-Kent Journal of Intellectual Property*, 6 (2007) 213.

9   Christensen T M, The GNU general public license: Constitutional subversion, *Hastings Constitutional Law Quarterly*, 33 (4) (2006) 397.

10  Coates J, Creative commons, the next generation: Creative commons licence use five years on, *SCRIPTed: A Journal of Law, Technology and Society*, 4 (1) (2007) 72.