



Free/Libre and Open Source: policy, software, culture

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Outline

- The creativity and innovation policy debate
- What is.. "Intellectual Property", Copyright, DRM, "copy control", etc
- Full spectrum of choice
- Over to you...

More topic areas than we can possibly discuss, and want audience to direct

Disclaimers: IANAL, TINLA

This is politics, so expect emotions...



Standing.....

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

– Sir Isaac Newton, letter to Robert
Hooke (1676)



Standing....

"A dwarf on a giant's shoulders sees farther of the two."

–George Herbert, *Jacula Prudentum*
(1651)



Standing...

"Dwarfs on the shoulders of giants see further than the giants themselves."

– Stella Didacus, Eximii verbi divini
CONCIONATORIS ORDINNIS
MINORUM Regularis Observantiae
(1622)



Standing..

"A dwarf standing on the shoulders of a giant may see farther than a giant himself."

– Robert Burton, *The Anatomy of Melancholy* (1621)



Standing.

"We are like dwarfs sitting on the shoulders of giants. We see more, and things that are more distant, than they did, not because our sight is superior or because we are taller than they, but because they raise us up, and by their great stature add to ours."

– John of Salisbury, Metalogicon (1159)

"We are like dwarfs standing (or sitting) upon the shoulders of giants, and so able to see more and see farther than the ancients."

– Bernard of Chartes (circa 1130)



Lessig

"Creativity and innovation always builds on the past.

The past always tries to control the creativity that builds upon it.

Free societies enable the future by limiting this power of the past.

Ours is less and less a free society."

– Lawrence Lessig, July 24, 2002.

Question: What past?



Past Intermediaries....

Creative Commons tagline:

"It can be that easy when you skip the intermediaries"

Leads to the question:

but what if you are the intermediary?



Past Intermediaries...

Printing press

Talking machines / player piano (First digital music)

VCR

Internet...

- Never before has the limited monopoly of copyright been claimed to create to a monopoly on the manufacture, distribution, ownership or control of technology



Past intermediaries..

Intermediaries must be seen as the temporary "hired help" between creators and their audiences.

Normal part of evolution to have "transformative changes" in ways of doing business.

Read "Innovators Dilemma", "Innovators Solution", "Seeing what's Next" by Clayton M. Christensen, Harvard Business School



Past Intermediaries.

Institutional users

(Educational institutions and libraries)

- Seen by policy makers as representing the interest of "users", just as other intermediaries such as CRIA and collective societies are seen as representing the interests of "creators"
 - Learning is a lifetime process, not something that happens only within the confines of a provincially chartered institution
 - Libraries offer access, search and archives of human knowledge, but these necessary functions are not only offered by libraries
 - Each time an institution gets an "exception", something is taken away from all those not part of the institution!



Past creators...

"Everyone has a right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

- UN Declaration of Human Rights, Article 27 (2)

Copied from Creators' Rights Alliance website:

http://www.cra-adc.ca/mission_e.html



Past creators..

"Article 27.

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

Copied from: <http://www.un.org/Overview/rights.html>

See also: Article 11 (innocent until proven guilty), Article 17 (property), Article 19 (communications)



Past creators.

We must work with past creators and the groups they formed in the past in order to convince them to protect all creators' and users' rights, not increasing the control of the past

Are you a member of such a group? Have you been polled about your views on copyright?

Do collective societies (Access Copyright, SOCAN, etc) represent the interests of creators, or do they simply administer one business model option among many? Should business model representatives be considered part of the Creators' Rights movement?



CRA Canadian caucus members include:

- Visual: Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), Canadian Artists representation (CAR/FAC, and collective), Directors Guild of Canada, Guild of Canadian Film Composers (GCFC)
- Music: American Federation of Musicians (AFM), Canadian Music Centre (CMC), Canadian League of Composers, SOCAN, Songwriters Association of Canada (SAC)
- Photo: Canadian Association of Photographers and Illustrators in Communications (CAPIC), Professional Photographers of Canada
- Literary: CANCOPY, League of Canadian Poets, Literary Translators Association of Canada, Playwrights' Union of Canada (PUC), Periodical Writers' Association (PWAC), Writers Guild of Canada, The Writers' Union of Canada (TWUC)



What is:

"Intellectual Property"

- used to refer to a group of laws that create (often temporary) monopolies on intangibles so that they can be bought/sold like tangible property
- areas of law more dissimilar than similar, and use of term creates confusion
- confusion benefits certain special interest groups who gain from these areas of law being complex to understand and navigate
- when talking about copyright, say copyright. When talking about trade secrets, say trade secrets, ...
- the World Summit on the Information Society working group on Patents, Copyrights, Trademarks and related laws suggests the acronym PCT when trying to reference group of laws:

wsis-pct.org



Thomas Jefferson

"If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it. Its peculiar character, too, is that no one possesses the less, because every other possesses the whole of it."

– Thomas Jefferson to Isaac McPherson, 13 Aug. 1813



What is: Copyright

- temporary monopoly on certain activities granted to the creator
- author may "sell" and/or "license" the material part of this monopoly, but may only "waive" the moral part
- while some authors wish to collect royalties to express their material rights, royalty collection is only one business model among many. Copyright is not a "right of remuneration"
- Free/Libre and Open Source Software (FLOSS), Creative Commons, Open Access and other initiatives do not replace copyright, but help copyright holders express their material rights using a full spectrum of creation, distribution and funding models.
- "Copyright is to creativity like water is to humans; too little and you dehydrate and die, too much and you drown and die"



What is: Digital Restrictions Management (DRM)

- technology that proponents "claim" protects copyright related rights.
- everyone must ask how this is accomplished, and what the costs are!
- Technological Protection Measures (TPM) limit access to authorized persons, and encode identity information (digital signatures, watermarks)
- Access Controls often compared to digital locks which **keep people without keys out**, denying access to unauthorized persons
- copyright holders **want to give access** to authorized persons
- copyright is a set of legal tools which limit what people **who already have access** can do with content
- Access Controls and copyright seek to accomplish different goals. One can't be used to protect the other



"copy control"

- so-called "copy control" doesn't really exist
 - Access Control: access to content only available on "authorized" access tools. Creates a monopoly in these tools which can be leveraged to control creative markets
 - Examples: DVD Movies (DVD CCA), music from iTunes (Apple), music from PureTracks, Napster Canada (Microsoft)
 - only customers of access tools authorized by DRM vendor can access encoded content without "circumventing" the DRM
 - harmful unintended consequences (AKA: civilian casualties)
- Media Defects: information is encoded in a way that behaves a certain way with existing access tools.
 - "Copy control" music CDs which tend to target Microsoft Windows customers



Contrast: (real) Books vs. DRM

- most "human readable" format
- environment/technology (eye glasses/etc) created for/by reader, and controlled by reader
- purchased books are property of owner, with few regulated limits protected in law
- purchaser controls use (use as furniture) , resale, loan, and destruction (throwing away, firewood, etc)
- least "human readable" format
- environment/technology controlled by DRM company
- use regulated by technology under control of third party manufacturer of authorized access technology, under contract with DRM company
- DRM company controls use, resale, loan, and new types of destruction (including "self destruct" and other time limited access)



Peer production, Peer distribution

- "Commons-based peer production"
 - "Coase's Penguin, or Linux and the Nature of the Firm", by Yochai Benkler
 - includes Free/Libre and Open Source Software (FLOSS)
 - "users' freedom to run, copy, distribute, study, change and improve the software", without additional permission or payment.
 - Creative Commons.
- Peer Distribution
 - "And they tell two friends, and so on, and so on"
 - (authorized) Peer-to-Peer (P2P) file distribution

FLORA.ca/floss.shtml



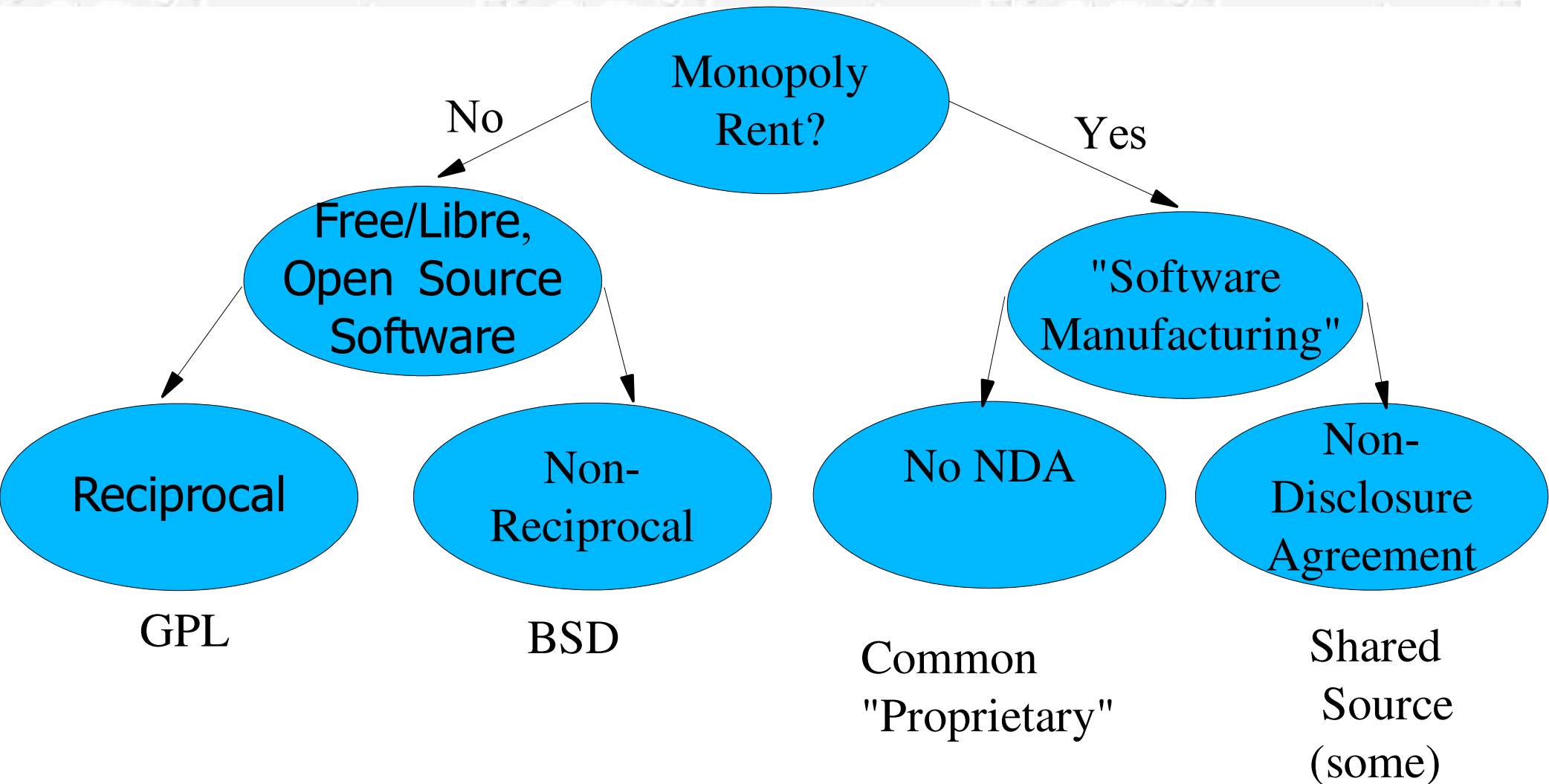
Contrast: PP/PD vs. Royalties

- motivation before creation/distribution (grant, advertising for other product, etc)
- no counting, levies.
- sharing as benefit, not threat
- unrestricted loaning of media
- remaining litigation not against customers, but legacy industry
- non-commercial infringement a concept of the past - battles between creators and users over
 - unknown reward "after the fact"
 - levies (imposing business models) and litigation (suing best customers)
 - always in constant battle with user community (and modern creators) over requirement for counting, amount of "monopoly rent", and recent attempt to have remote control over personal communications technology

Mix options for different uses



Full Spectrum for software?





Modern business models

- marginal cost is zero for intangibles like software, etc
 - counting copies not necessary, and creates overhead/incentive for infringement
 - finance fixed cost of development, reward for creativity
 - resource development other than from counting copies
 - leveraging lower costs of intangible inputs
 - leverage zero marginal cost by re-partitioning revenue streams
- not the "bleeding edge", but fairly well established models used by many creators.
 - FLOSS is fastest growing part of software economy
 - many creators adopting Creative Commons to "skip the intermediaries", including musicians and book authors



Now over to you!

Free/Libre and Open Dialog

- Last night: Policy Laundering, Petition for Users' Rights
- KillBillC60.ca
 - Technical protection measures, Inter Library Loan, Photography, 50+50+50?
 - Why it is important what parliamentary committee will review the bill!! Where do the federal parties stand?
- Software Patents
- "Code is law", "Law is Code", accountability and transparency, ATIP for government owned software
- Competition, trade policy (NAFTA Chapter 10)