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To cite this version:

Miguel Said Vieira, Primavera de Filippi. Between Copyleft and Copyfarleft : advanced reciprocity for the commons. Journal of Peer Production, 2014, pp.42. hal-01026111

HAL Id: hal-01026111

https://hal.science/hal-01026111v1

Submitted on 22 Jul 2014

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Between Copyleft and Copyfarleft: Advanced reciprocity for the commons

Miguel Said Vieira[1] **& Primavera De Filippi**[2]

Introduction[3]

Licensing debates abound in the "free culture" academic discussion (see, i.a., Downes, 2009; Hill, 2005; Lemos, 2010; Netpop Research, 2009; UNESCO OER Community, 2011), but we believe much of it suffers from one of two problems. First, restricting themselves to a purely technical, legalistic approach; this kind of approach is important and necessary for improving licenses, but it is not sufficient to deal with the social impacts and ramifications of such licenses. Second, adopting a dualistic and overly antagonistic approach, particularly with regard to the debate on commercial usages; this debate touches important aspects of the licensing discussions, but it frequently stalemates (due to its polarized character) before it is possible to make significant advances in deepening our knowledge about these issues, and coordinating efforts for improving the knowledge commons.

The *copyfarleft* licensing model is a concrete proposal related to the commercial usages debate. It suggests one way to improve on "non-commercial clauses", arguably making them more effective in reducing negative social impacts, such as wage labour being exploited in building the commons. We believe it is an interesting contribution that mostly avoids the problems mentioned above, but also has its potential drawbacks. This position paper comments on them (as well as on some merits of this model), and proposes an alternative or complementary model that attempts to solve some of those drawbacks.

I. From *copyleft* to *copyfarleft*

Free culture licenses had as their most relevant predecessor the GPL (GNU General Public License), a free software license which makes no distinction regarding commercial and noncommercial usages. This distinction first appeared in some Creative Commons licenses, with the introduction of the noncommercial clause which only allows unauthorized use for noncommercial exploitation. While these licenses are widely used, there has been a large debate regarding what exactly constitutes a commercial use, and whether the noncommercial clause is indeed likely to ultimately benefit the knowledge commons.

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[3] The authors thank Stan Rhodes, Alan Toner, Dmytri Kleiner and Stefan Meretz for their comments on specific sections of this paper.

The *copyfarleft* licensing scheme proposed by Dmytri Kleiner (2007)[4] stipulates similar restrictions to the noncommercial copyleft model, but provides additional conditions on the kind of usages which are effectively permitted under the license. Specifically, while all noncommercial usages are allowed (subject to the restrictions imposed by the copyleft clause), the copyfarleft model distinguish between commercial usages enacted by worker-owned collectives, cooperatives, or any other institution where profits are distributed (equally) amongst all workers, and those enacted by commercial entities or corporations whose businesses are exclusively based on the exploitation of wage labour. While the former kind of commercial exploitation is generally allowed under the copyfarleft licensing scheme (as opposed to what is usually the case in noncommercial licenses), the latter kinds remain prohibited – although they can still be negotiated outside the scope of the license.

This licensing scheme lies, thus, somewhere between a standard copyleft license (as in a Creative Commons CC-BY-SA) and a noncommercial copyleft license (as in a CC-BY-NC-SA). The reason underlying this choice is that, while, on the one hand, a standard copyleft license allows corporate entities to exploit and profit from the labour employed in building the commons, without having to give back to them –something which Kleiner points out as highly problematic, and particularly so outside of the realm of software production–[5] on the other hand, a noncommercial license precludes even commons-based producers (such as many of the workers-owned enterprises) from commercially exploiting a work (and as Kleiner argues, this can also be counterproductive for the transformative potential of these licenses).

A. Advantages

By breaching the gap between standard copyleft and noncommercial copyleft regimes, the copyfarleft model allows for certain commercial exploitations of the licensed works –those that could help sustain creators and foster a decentralized “ecosystem” of self-organized, commons-based producers which own their means of production. At the same time, the copyfarleft model precludes free-riding by any commercial entity that operates based on the exploitation of wage labour. Yet, the model does not discriminate against commercial activity *per se*: as in much of the free software world, it considers commerce an important element for the long-term viability of commons-based production. What it does go against is the exploitation of wage labour by those who own the capital and means of production. Indeed, concentrated ownership is regarded by Kleiner as one of the pillars for the fundamental inequality that characterizes existing capitalism: “Where property is sovereign, the owners of scarce property can deny life by denying access to property, or if not outright deny life, then make the living work like slaves for no pay beyond their reproduction costs”.

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[4] In 2007 Kleiner outlined the copyfarleft model, but did not materialize it into a specific license. This only happened in 2010, with the Peer Production License: a derivative of the Creative Commons BY-NC-SA license, which slightly redefines its freedoms as explained in this paragraph.

[5] The reason for this distinction is that “art is not, in most cases, a common input to production as software is” (Kleiner, 2007); it has no intrinsic use value for production (unlike software), and its commercial value exists mainly in the possibility of selling it. So while corporate users of freely-licensed softwares will generally support their production (as such software is useful for their businesses), this is generally not the case for art.

This model seems, to us, an interesting alternative to the deadlocks that debates on commercial vs. noncommercial licenses frequently lead to. It also expands the opportunities for workers to subsist through self-organization, with less dependency on wage labour from corporate entities, and thus reducing the ability of these corporations to co-opt and/or influence commons-based production.[6] Yet, the copyfarleft licensing model is not devoid of any drawbacks, some of which will be analysed below.

B. Drawbacks

This section will explore the link between (de)commodification and copyfarleft licenses, by analyzing some of the critiques they have been subject to, such as: the risk of actually hampering the commons because of the discretionary exclusion of corporate entities (Rhodes, Bauwens), the fact that existing successful commons-based projects do not present this kind of exclusion criteria (Toner), and, finally, the excessive focus on ownership rather than on production structures (Meretz).

1. Rhodes, Bauwens

Stan Rhodes, founder of the Peer Trust Network Project,[7] has two main criticisms of copyfarleft.[8] The first he sees as its failure of principle: copyfarleft excludes particular businesses' use of inherently non-rival goods, and that goes against the wider public good, regardless of the intentions underlying the exclusion.

According to Rhodes this can be contrasted to copyleft, which seeks to restore and maintain nonrivalry for all creative works. In other words, the copyleft clause is there to guarantee that everything descended from the commons is and remains free for anyone to use and reuse.

His second criticism of copyfarleft is on the grounds of practical adoption: copyleft's barrier to entry is low for all uses and users of the good, whereas copyfarleft's barrier to entry is low for some, and high for others. This difference makes copyleft generally preferable, particularly for any artists who cannot rule out the possibility of businesses paying them in the future. While copyleft guarantees their free access to their work and all derivatives no matter their use, copyfarleft does not. Thus, regardless of any political principles, it would seem the safer bet.

Rhodes generalizes copyfarleft's two difficulties to any regime that seeks to exclude any entity from using nonrival goods, regardless of the reasons behind the exclusion.[9]

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[6] If workers who contribute to commons projects are dependent on wage labour paid by a corporation, this corporation has a palpable power over the way those projects unfold. If those workers are self-organized, the discretionary power of these corporate entities will necessarily decrease.

[7] The Peer Trust Network Project has been created by Stan Rhodes with a view to create a framework on which to build and maintain “Vested Commons” and “Utilicontributist economies” that are beneficial, fair, and honest. For more details, see http://p2pfoundation.net/Peer_Trust_Network_Project

[8] More details on Stan Rhodes’ criticism of the copyfarleft model, and his argument that it might eventually lead to restricted commons, can be found at http://p2pfoundation.net/Copyfarleft.

[9] Just like the copyleft model, the copyfarleft creates an opt-in structure based on a particular perspective of commons management that everyone must abide to in order to be entitled to reap the benefits of the commons. Yet, while the copyleft requirements for opt-in are very low, the copyfarleft requirements are much stronger in that they would encompass a change in the whole structure of production.

Michel Bauwens, founder of the Foundation for P2P Alternatives,[10] seconds these concerns. Yet, Bauwens' critique of Kleiner's position is admittedly paradoxical: while he disagrees with the radical anti-capitalist perspective of Kleiner's licensing scheme and believes that the premises and analysis upon which it is based are mistaken, Bauwens nonetheless endorses the Peer Production License itself, claiming that the copyfarleft model is a plausible tool to advance commons-based peer production as a new mode of production (Bauwens, 2012).

2. Toner

While appreciating the spirit of the shift from a "non-commercial" to a "non-alienation" clause, Alan Toner (2007), intellectual property and communications researcher, expressed serious doubts on the practical operability of this clause. It is already difficult to assess whether a particular exploitation should be regarded as being commercial or non-commercial, it might be even harder to determine objectively whether or not any given actor or institution is guilty of exploiting wage labour.

Moreover, Toner sees Kleiner's approach as prioritizing the articulation of an ideological project over the construction of tools that could make it happen. While he concedes that both are important (and mutually constitutive) aspects in political struggles regarding access to knowledge, for instance, he also points out that some of the most successful copyleft initiatives (such as GNU/Linux, Wikipedia, etc) went the opposite way, prioritizing the creation of "functioning economic resources for their users", while "limiting the political dimension to that which is directly pertinent to that field of activity" (Toner, 2007). Because of that, Toner believes that the copyfarleft movement, in spite of its preliminary appeal, might be unlikely to mobilize a sufficient amount of people for it to be actually effective.

3. Meretz

Stefan Meretz, a German commons advocate affiliated with the Oekonux group,[11] has written a thoughtful critique to Kleiner's approach which deserves being taken into account (Meretz, 2008). It constitutes an interesting counterpart to Rhodes' and Toner's critique, as it comes from an almost opposite side of the discussion's spectrum.

Kleiner (2010) considers that property –as in private property– is theft because property owners can extract rent from the labor of propertyless workers. He claims that rent should only be extracted by workers applying their own labor to the benefit of their community. The fruit of such labor can be used by other workers who are themselves part of the commons, but not by property owners who use wage labor. Thus Kleiner criticizes the copyleft approach on the grounds that it is not concerned with "ownership" but only with regulating the "usage" of property. Copyfarleft tries to go one step further, by encouraging a change in the ownership structure. This is done by creating a distinction between a commons based economy (more

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[10] P2P Foundation: The Foundation for Peer to Peer Alternatives is an organization with the aim of studying the impact of peer to peer technology and thought on society. For more information, see http://p2pfoundation.net

[11] The Oekonux project was founded to research the possibilities of free software to fundamentally change the current political and economic structures. Oekonux considers that the mode of production of free software represents a new mode of production that has the potential to supersede the capitalist mode of production. For more information, see http://oekonux.org.

precisely, a collective ownership-based economy, which is allowed to commercially exploit the commons) and a wage labour based one (which is precluded to do so).

Stefan Meretz criticizes the radical copyleft model proposed by Kleiner as being simplistic and in general incorrect, based on categories from David Ricardo that, Meretz argues, have been superseded by Marx's analysis. The main criticism presented by Meretz is that Kleiner focuses too much in the aspects of ownership (particularly of the means of production) and circulation, while considering production itself to be a neutral sphere. Indeed, his criticism of property as "theft" only refers to the "rent"[12] extracted by commercial companies exploiting wage labor, but not to sale of the commodities on the market. For Meretz, the reappropriation of the means of production is, of course, a necessary step to promote a more equal distribution of wealth. Yet, it will only succeed in transforming society to the extent that it also involves a change in the mode of production, to go beyond the logic of exploitation and exchange; without this additional transformation, worker-owned collectives tend to succumb to external pressures and end up behaving quite similarly to wage-labour based companies.[13]

Finally, an additional limitation we identify in the copyfarleft model is that, while it attempts to deal with the power inequality between corporate and workers-owned entities (by fostering self-organization through the latter), it does not tackle another important issue: the fact that many of those corporate entities that use works from the commons might not be contributing to these commons, even though they are capable of doing so. This is an important aspect for the long-term provisioning and sustainability of the commons, which we tried to address more specifically in our proposal to extend or improve the copyfarleft model elaborated by Dmytri Kleiner.

II. Alternative/complementary approach: Commons Reciprocity License

This section proposes a tentative commons-based licensing model that restricts commercial usage according to how much the user has contributed to the common pool.

We provide here the outline for a new license –the Commons Reciprocity License– as an alternative, or perhaps complementary approach to Kleiner's Peer Production License. On the one hand, it could be regarded as an alternative approach, in that it tackles a different aspect of the issue: instead of excluding all actors which are not part of the commons, it aims at providing means to generate reciprocity by also directing production towards the commons sphere. On the other hand, it could also be regarded as complementary, because its "reciprocity clause" could be used as a variation of Kleiner's license –e.g. by combining it with restriction on wage-labour based users.

Indeed, the license we sketch here aims to achieve a similar objective to Kleiner's Peer Production License –*i. e.* avoiding that corporate entities unfairly benefit from the commons– without, however, excluding these entities from the opportunity of freely using and reusing the commons, both for commercial and non-commercial purposes, as long as they also contribute

[12] Meretz points that the use of the word *rent* in Kleiner's argument is conceptually incorrect, and what he actually refers to is *surplus value*.

[13] The debate between Kleiner and Meretz continued in a mailing list thread. Kleiner's reply, which is the first message of this thread, is available at http://www.oekonux.org/list-en/archive/msg04129.html.

to the commons. Essentially, the Commons Reciprocity License can be regarded as an adaptation of the Creative Commons CC-BY-NC-SA license, featuring, however, an additional clause –the “reciprocity” clause– whose goal is to preclude the commercial exploitation of the commons by people who did not yet contribute to them. The “reciprocity” clause entails, therefore, a condition according to which only those who contribute to the commons are entitled to commercially exploit them –but only to a similar or equivalent extent (*i. e*. they can take only as much as they have given to the commons). In other words, works released under this license would remain freely available to all for non-commercial use, whereas commercial exploitation would only be permitted to those who (already) contributed to the commons pool –and only proportionally to such contributions. Alternatively, standard copyright provisions apply: commercial exploitation can only be legitimately done previous authorisation by the relevant right owners, and subject to the payment of the corresponding licensing fees (if any).

It has to be noted, however, that assessing the amount of contributions that anyone has made to the commons would be a challenging task. We suggest a possible way to solve that problem through the introduction some kind of “peer-currency”: a system of tokens that roughly determined how much each user has contributed to the commons. Commercial uses could be done either by “spending” these tokens or by passing them along to the creator of the commercially used resource. The advantage of the first option is that the peer-currency –once used– would no longer exist (thus avoiding the risk of herding, speculation, etc). In the second option, instead, the peer-currency would be transferred to the creator –thus allowing for some form of recognition or “shared benefits”. As we are still unsure about which option would be best for this kind of license, we suggest both possibilities for further discussion.

A. Advantages

The idea is to avoid a full schism between commons and commercial, wage-labour based actors (through a pseudo-currency system allowing for such actors to use the pool without the uncertainty and costs of discretionary, individual licensing negotiation) while striving to reach a more equitable relation between them (by requiring those particular actors to contribute to the commons pool in turn for their uses).

Under this model, fairness can be improved without excluding corporate entities from the possibility of contributing to the commons by other means than money, while still allowing underprivileged, non-commercial users to benefit from the commons regardless of their initial capacity to contribute. In this regard, the Non-Commercial clause is important because without it the model would not be much different from a copyright collective (such as ASCAP, SACEM) using a peer-currency instead of actual money.

This approach is, overall, consistent with the underlying principles of the “gift economy” that characterises many initiatives of “social production” or “commons-based peer-production” (Benkler, 2002, 2006) insofar as it allows authors to contribute to the commons under a certain expectation of reciprocity, while nonetheless providing a means to avoid free-riding by commercial actors that do not themselves contribute to the commons.

It is interesting to note that the “reciprocity clause” actually introduces an expectation of “advance reciprocity” –as opposed to the more traditional concept of “deferred reciprocity”– because every entity has to contribute beforehand in order to obtain tokens and thus make

commercial uses of the commons. Indeed, as opposed to the *copyleft* clause, which introduces an *ex-post* obligation to contribute to the commons, a system based on a “peer-currency” essentially constitutes an *ex-ante* protection against free-riding. On the other hand, reciprocity remains deferred from the perspective of non-commercial users: when they contribute to the commons, they know that large corporations such as Google or Facebook will only be able to use their work to the extent that they contribute back to the commons –either by producing and contributing for the commons in order to obtain credits, or by paying the proper licensing fees.

Finally, by creating an “alternative space of exchange” within the commons, this approach has the advantage of reducing people’s dependency on market-based schemes and could potentially contribute to de-commodifying cultural goods. Indeed, as people are no longer required to sell their labour in order to purchase cultural goods, they can more freely decide whether or not to enter into the market system.

B. Drawbacks

The licensing model we sketch here is not devoid of potential problems. An important one lies in the determination of the “exchange-rate” between different kinds of works. In other words, how can we measure individual contributions (in different fields) in terms of tokens? How many tokens should be awarded for the user who contributes an image, a video, or a short story to the commons? Shall derivative works or improvements be rewarded with less tokens? Should the system also attempt to address any measure of quality or artistic merit in these works? And if so, who would be responsible for this kind of evaluation?

While these questions entail complex and serious considerations, we believe a certain level or arbitrariness in the initial assessment would not be a definitive impediment for this system to be put into place. The guidelines for the attribution of tokens could be progressively refined by the community, in order to establish a reasonable degree of equity and fairness into the system, avoid herding or speculation with the proposed system of tokens, and, eventually, reduce the incentives to “game the system” –e. g. by means of frivolous contributions to the commons as a strategy to allow for the commercial exploitation of its works.

III. Conclusion: towards a commons economy

Yochai Benkler’s in-depth analysis of commons-based peer production has shown that it is possible to produce large successful projects by gathering the contribution of a large community of people which participate voluntarily –with no explicit commercial motives– and which coordinate themselves freely –without relying on traditional forms of hierarchical organization (Benkler, 2006). This is close to Michel Bauwens’ description of a Peer-to-Peer economy based on bottom-up processes and distributed agents that freely engage in commons-oriented tasks or activities, without external coercion nor confrontation (Bauwens, 2005a, 2005b).

First initiated in the realm of software, with the emergence of the Free/Libre Open Source Software movement (De Laat, 2005), and subsequently transposed into the realm of artistic and intellectual endeavors with the advent of the Free Culture / Open Content movement (Goss, 2007), the copyleft approach to copyright licensing encouraged the establishment of a growing pool of resources structured as a commons. This promoted, and to a large extent supported the development of an

alternative mode of socio-economic production oriented towards cooperation, collaboration and participation for the common good, rather than towards the accumulation of capital and maximization of profits (Stallman, 1998).

Building upon the underlying principles of copyleft –whose ultimate goal can be interpreted as preventing the commodification of the commons– the copyfarleft approach constitutes an attempt at further empowering the commons by encouraging a shift from a purely market-based economy (governed by corporate entities) to a commons-based economy (relying on workers' self-organization and community norms).

While it presents significant advantages in terms of supporting the actors of a commons-based economy, along with reducing the opportunities for free-riding or cooptation by commercial entities, Kleiner's Peer Production License has, however, the important drawback of precluding corporate entities from the opportunity to contribute to the commons in a more direct way, which is not limited to paying the licensing fees.

The Commons Reciprocity License sketched in this article seeks to achieve similar results as Kleiner's licensing scheme, although it approaches the problem in a less drastic manner: it does not arbitrarily exclude commercial entities according to their model of production (e.g. wage-labor vs. cooperative model) but merely according to whether or not they have already contributed resources to the commons.[14] As such, it can be regarded as a transitional approach –aimed at protecting commons from commodification, while not insulating them from existing production structure and facilities– up to the point in which the commons will assume such an important role in society that the copyfarleft scheme proposed by Dmytri Kleiner will effectively be able to grab the critical mass of users necessary to succeed in overcoming the capitalistic mode of production.

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[14] Although, as mentioned before, both clauses –the reciprocity-based one suggested here, and the copyfarleft one that excludes wage-labour based enterprises– could be combined; in this case, only wage-labour enterprises would need to have tokens for performing commercial usages.

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