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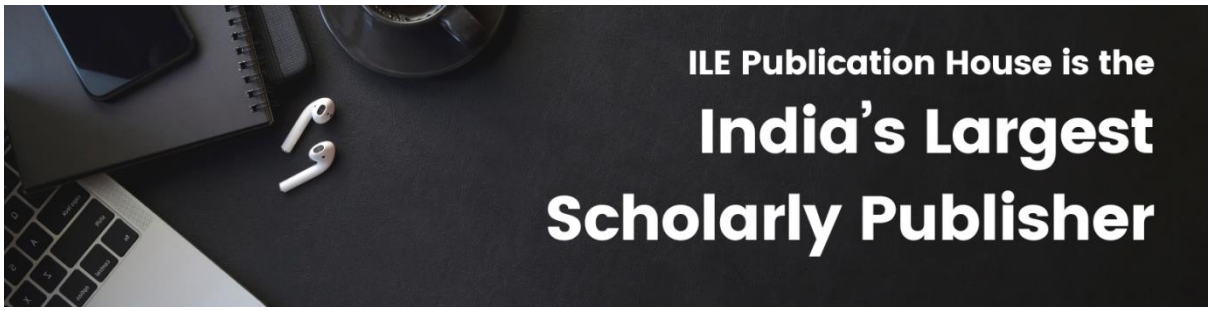

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Copyright or Copyleft: Copyright or Copywrong: What is the Dichotomy?

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ABSTRACT

This article first examines the many factors that the licensor takes into account when deciding how stringent of a licence to issue. It draws attention to the wide range of motives that could influence licence decision-making. The article goes on to say that when works have a strong appeal to the community of open-source contributors. For instance, when contributors stand to significantly benefit from signalling incentives or when the licences are well-trusted, permissive licences will be more common. The restrictive ones will be shared when the demand is more brittle. It should be noted that these licences are intricate legal contracts that haven't been put to the test in court. There are still many questions concerning how to interpret them.

Whether the licence stipulates that the source code must be made publicly available when changed versions of the software are distributed, such a clause is occasionally referred to as a "copyleft" clause. Whether the licence prohibits the infringement of music. In this article, the study highlights the dichotomy of copyright and copywrong with music infringement and copyleft and copyright in the digital system and open and free software.

Keywords: *Copyleft, Copyright, Copywrong, Free software, and Open source*

PROLOGUE

Copyright protection for software developers' creations has been available for a long time. These copyrighted works are frequently licenced instead of sold when for-profit businesses create proprietary software products. Software developers can restrict users' rights (such as the ability to run the software simultaneously on several computers) and limit their liability if the product does not function as intended by licencing the software. However, much of the software was made available in the early years of the computer software business without a clear licence controlling its use. In reaction to these occurrences, MIT programmer Richard Stallman created a novel method of software distribution in the middle of the 1980s. He required users to licence the code under the GNU public licence rather than placing it in the public domain.[1] A specific code cannot coexist with the legal production of proprietary and free software.[2] The proprietary form depends on the continued application of applicable copyright law. The constraint that successor code must be licenced in precisely the same way, namely with its source code freely available, is established by copylefted code, in contrast, which asserts a so far legally unproven licence linked to copyright.[3] One aspect of a major philosophical disagreement between the legal structures' hard-core supporters is the incompatibility of free and proprietary legal frameworks within a single piece of software. Many people who advocate for copylefted software only do so as a backup plan in case the political impossibility of eliminating nearly all currently existent proprietary rights in software should ever arise.

The open source process, a method of software development in which contributors freely submit code to a project leader, who then makes the improved code widely available, is an intriguing setting in which to consider licence scope because the usual factors (such as

[1] J. Lerner, *The Scope of Open Source Licensing*, 21 JOURNAL OF LAW, ECONOMICS, AND ORGANIZATION, 20 (2005), https://academic.oup.com/jleo/article-lookup/doi/10.1093/jleo/ewi002 (last visited Feb 10, 2023).

[2] BRIAN W. CARVER, *Share and Share Alike: Understanding and Enforcing Open Source and Free Software Licenses*, (2018), https://osf.io/p327s (last visited Feb 10, 2023).

[3] JONATHAN A. PORITZ, *INFORMATION TECHNOLOGY WANTS TO BE FREE*, 98 AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, 18–23 (2012), https://www.jstor.org/stable/23414610.

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timing, exclusivity, and fee structure) are irrelevant. In order to use open-source software, users must often agree to a licence agreement, which may impose several limitations.[4] For instance, the user might have restrictions on how widely he can distribute a modified version of the application as a private commercial product without disclosing the source code.

Copyright and other intellectual property rights may not seem necessary to authors who want to donate their works to the public. However, subsequent authors who make contributions to an original author's work may be able to claim proprietary rights in those contributions, contradicting the original author's intention to commit his work to the public. New literary forms, including hypertext-linked World Wide Web sites, have been facilitated by computer and networking technologies. As a result of the ability to copy, change, and disseminate works saved on electronic media thanks to the microprocessor and the Internet, pre-existing literary works like books, periodicals, and pamphlets are also transformed in cyberspace. Computer technology allows authors to make their works widely accessible to the public. The technology makes it feasible for co-authors to work virtually and enables strangers to cooperate on artistic and literary work. For instance, Fans of an artist write an unofficial biography about the musician's life that includes a schedule of all previous appearances in public and planned performances. Research psychiatrists work together to create test instruments that they hope to make generally available to the medical profession, such as multiple-choice tests for a patient's mental state.

In each of these cases, the author groups may be dispersed over the globe or they may live close to one another. The only thing that connects the authors, regardless of whether they are close friends or total strangers, is a shared interest. In any case, they produce works that advance society by encouraging the exchange of ideas, and they make their creations accessible to one another and the general public for non-economic reasons. Instead of trying to profit from the sale of copies, they are making an intellectual contribution. These collaborators utilise computer networks to almost free distribute copies of their creations to one another and others.[5] A recipient can download digital copies of a work, which are, by definition, exact replicas of the originals and are easily editable. The recipient is free to make changes or other contributions to the work before making it accessible to others. In this approach, the general public can work together in ways that were previously not feasible. Authors and academics dispute whether to continue or terminate the copyright protection of digital works.[6] The disagreement about the proper scope of copyright protection for computer software during the past years has been a component of a larger discussion over the proper scope of copyright in all digital works. However, a proprietary model that does not facilitate the collaborative production of software has become the dominant paradigm for software development. Most software developers keep their source code from customers under the proprietary software paradigm.[7] Users get used to a certain programme as they use it. They will unavoidably discover that this preference is restricted in legal and technological terms. Their requirements might alter with time, and they might decide to alter an existing software rather than switch to a brand-new kind.

INTERNET AND COPYLEFT ISSUES

Online creative works (online works) pose difficulties for the traditional copyright approach. One solution to these problems is the use of Creative Commons licences.[8] Even while

[4] Julien Pénin, *Are You Open?: An Investigation of the Concept of Openness for Knowledge and Innovation*, Vol. 64 REVUE ÉCONOMIQUE 133 (2013).

[5] Ira V. Heffan, *Copyleft: Licensing Collaborative Works in the Digital Age*, 49 STANFORD LAW REVIEW, 1487 (1997), https://www.jstor.org/stable/1229351?origin=crossref (last visited Feb 10, 2023).

[6] Heffan, *supra* note 5.

[7] CARVER, *supra* note 2.

[8] Heidi S Bond, *What's so Great about Nothing? The GNU General Public License and the Zero-Price-Fixing Problem*, 104 THE MICHIGAN LAW REVIEW ASSOCIATION 547 (2005).

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Creative Commons licences have many advantageous aspects, some of them have drawn criticism. The shortcomings of Creative Commons licences are a symptom of a larger problem with the copyright system's inability to interact with the public.[9] Despite some resonance with a growing copyright paradigm, Creative Commons licences function according to the conventional copyright model.[10] However, many copyright principles are not well known outside of the legal world, and several continue to be a topic of discussion there. Furthermore, there is evidence that the legal framework given by copyright law conflicts with community norms and expectations for online works.

The Internet is a genuinely global community, and various technological, social, and economic forces interact to drive its standardisation.[11] There have been winners in some areas, such as TCP/IP, the Internet communication protocol, MP3 (which seems to be gaining ground in the music compression industry), and Windows from Microsoft Corporation.[12] A standard must also be adopted for email, web programming, web browsing and Internet searches. However, giving intellectual property rights results in the monopolisation of a product that Internet users require. What safeguards are in place to stop the owner of the related copyright from collecting monopoly rents once an internet technology has achieved widespread use and therefore undoing the rise in consumer welfare that the standard brought about? Some contend that granting standards intellectual property rights results in a monopoly issue and a corresponding risk of declining social welfare and value. The issue is that standard holders can obtain monopoly rents that are higher than a typical intellectual property incentive, which has a negative impact on social welfare. Some argue that these issues are irrelevant in situations like Java, where Sun is leveraging its copyright and trademark rights to create, improve, and maintain an open standard.[13] This is significant because when an open standard monopolist is not collecting monopoly rents but rather utilising its monopoly to foster competition, one might wish to be more lenient with them. The public interest and consumer welfare explanations must be weighed against the incentive-based justifications for intellectual property protection.[14]

The quandary posed by online creativity led to the creation of Creative Commons licences: how can an author share copyright-protected works of art in a way that benefits the commons rather than diminishes it? By establishing statutory provisions that permit particular, restricted uses of a copyrighted work within the period of protection without the author's approval, copyright law has historically attempted to strike a balance between public and private interests. This balance is further preserved by offering a brief period of copyright protection during which the private economic incentive can be realised.[15] However, this equilibrium is somewhat artificial. Utilitarian theory and natural rights theory, the two prominent theories that have long split copyright academics, have provided justifications for this balancing, albeit in different ways.[16]

According to utilitarian theorists, the public interest in having access to works of creativity, culture, and information must be weighed against the private economic incentive for authors and publishers to produce new works that copyright protection provides.[17] On the other hand, natural rights theorists offer a more comprehensive range of arguments favouring

[9] Susan Corbett, *Creative Commons Licences, the Copyright Regime and the Online Community: Is there a Fatal Disconnect?: Creative Commons Licences, the Copyright Regime and the Online Community*, 74 THE MODERN LAW REVIEW 503 (2011).
[10] *Id.*
[11] Donald M Nonini, *Reflections on Intellectual Commons*, 50 SOCIAL ANALYSIS: THE INTERNATIONAL JOURNAL OF ANTHROPOLOGY, 213 (2006), https://www.jstor.org/stable/23182120.
[12] *Id.* at 225.
[13] Jon L Phelps, *COPYLEFT TERMINATION: WILL THE TERMINATION PROVISION OF THE COPYRIGHT ACT OF 1976 UNDERMINE THE FREE SOFTWARE FOUNDATION'S GENERAL PUBLIC LICENSE?*, 50 AMERICAN BAR ASSOCIATION 261 (2010).
[14] Chip Patterson, *Copyright Misuse and Modified Copyleft: New Solutions to the Challenges of Internet Standardization*, 98 MICHIGAN LAW REVIEW 1351 (2000).
[15] Phelps, *supra* note 13.
[16] ANTONIOS BROUMAS, INTELLECTUAL COMMONS AND THE LAW: A NORMATIVE THEORY FOR COMMONS-BASED PEER PRODUCTION (2020), https://uwestminsterpress.co.uk/site/books/m/10.16997/book49/ (last visited Feb 10, 2023).
[17] *Id.*

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the conventional copyright balance. The supporters of John Locke's labour theory of property, which contends that while everyone has a natural property right to the fruits of their labour, all property rights are nonetheless constrained by others' rights to the common pool of property, are those who are most frequently referenced.[18] Other proponents of natural rights argue from the standpoint of democratic debate, arguing that if copyright is allowed to monopolise, it may unreasonably restrict future discourse on issues crucial to democracy.

Finally, Another school of thought challenges the ideas of authorship and originality, which are central to the copyright paradigm and are predicated on the idea that authors create something out of nothing. If this logic is sound, it will follow that authors should have significant copyright protection, akin to the monopoly protection offered by a patent. Because of this, providing broad and overlapping property rights in the subject matter of copyright poses a risk that can only be avoided by recognising the importance of public uses and the public domain. Many academics contend that the traditional copyright balance is inadequate in light of the ease with which creative works can now be made in digital formats and displayed online. These academics seem to be moving away from the prevailing paradigm of two prominent theories vying for influence on copyright laws and practices, at least in part.

LEGAL DICHOTOMY BETWEEN FREE AND LICENSED SOFTWARE

Richard Stallman resigned from his position as director of the MIT Artificial Intelligence Lab in 1984 to focus on creating "free" software, which was open-source and flexible. He reduced the risk of commercial exploitation of these discoveries in this way. The lower GPL (LGPL), a variation of the GPL, offers more latitude with regard to the "mixing" requirement: in particular, programmes are permitted to link with (or use) other programmes or routines that are not themselves made accessible under an open source licence.[19] The LGPL is comparable to the GPL in other ways, however. Meanwhile,severalf substitute licences were presented:

a) Originally released by its creator, Larry Wall, under the GPL, Perl is a UNIX-based programming language that enables the automation of numerous system management chores.[20] He eventually came to the conclusion that the conditions were excessively rigid and created what is now known as the "creative licence." Users were allowed to utilise the Perl code to create commercial goods with a few restrictions. No restrictions were imposed on the mixing of proprietary and open-source code either.[21]

b) The most common alternative to the GPL and LGPL today is a BSD-type licence, which has been embraced by numerous projects (including the Apache Web server).[22]

c) Commercial businesses who have "opened up" portions of their proprietary code—i.e., made the source code accessible to open-source developers—have created a different class of alternative licences. In order to solve copyright and liability issues of the corporate parent, these programmes usually include particular requirements.[23]

The "open source definition" was developed in 1998 by several open source leaders as a consistent set of standards for what constituted an open source licence.[24] For a program's licence to be deemed "open source," among the requirements were that;[25]

i. *The program's source code must be easily or completely accessible.*

[18] Copyright in Ideas: Equitable Ownership of Copyright | CanLII, https://www.canlii.org/en/commentary/doc/2013CanLIIDocs593 (last visited Feb 10, 2023).

[19] Kevin Xiaoguo Zhu & Zach Zhizhong Zhou, ***Research Note*** *—Lock-In Strategy in Software Competition: Open-Source Software vs. Proprietary Software*, 23 INFORMATION SYSTEMS RESEARCH 536, 536 (2012).
[20] Nonini, *supra* note 11.
[21] R. Bixler & Peter Taylor, *Toward a Community of Innovation in Community-Based Natural Resource Management: Insights from Open Source Software*, 71 HUMAN ORGANIZATION 234, 234 (2012).
[22] *Id.* at 235.
[23] Bixler and Taylor, *supra* note 21.
[24] Corbett, *supra* note 9.
[25] Patterson, *supra* note 14.

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ii. *Free redistribution of the programme, in source code or another format, is required.*
iii. *Modified software distributions must be permitted without restriction.*
iv. *It must be possible to distribute such modifications under the same conditions as the original programme.*

He considered this kind of sharing to be ethically significant and set out to completely redesign the proprietary Unix operating system so that his replacement would be compatible with Unix without violating any of the current Unix code's copyrights. Free software as a social movement is the foundation for the justifications for free software in general (and copyleft specifically) espoused by its creator, Richard Stallman. This movement is based on the belief that making software (and all no rivalrous commodities) free as a matter of policy would not hinder software development and that making software (and all no rivalrous goods) free is simply the right thing to do from an ethical standpoint. Stallman argues that copyleft is appropriate regardless of its effects on innovation or other values because it carries out the wishes of the software's creator, which is supported by the same moral convictions that can underlie a desire not to have one's creative work enjoyed without payment or permission, i.e., a stance that authors deserve the right to prioritise their works. Eric Raymond's Open Source Initiative, a non-profit marketing initiative promoting free software that was started when Netscape announced that its browser would be de-proprietaries, disagrees with Stallman's perspective. In favour of promoting the practical benefits to specific businesses that embrace non-proprietary software, Raymond avoids moral arguments.

Copylefted software and proprietary software can coexist if authorial control is the goal since they both represent the many authorial desires that each author has expressed regarding their respective works. The legal framework could recognise strong proprietary rights, including the enforcement of copyleft licences when authors choose to utilise them. Copyleft is unnecessary and proprietary rights should be minimised if sharing existing works is the intended goal (rather than a means to a more general maximisation of social welfare that would take other factors into account). This is because there would be no potential prioritisation of one's work to avoid through "jujitsu" licencing.

Free software, at least according to Richard Stallman's definition, is not free if the source code isn't freely provided alongside the object code. The "free" in "free software" is more akin to free speech than free beer, according to a famous statement made by Stallman. As long as the code is made available and a specific set of rights, such as the ability to make further copies of the software, is offered with the software, it is permissible to charge for a particular copy of free software. The idea of free software as envisioned by Stallman changed from one of software released without authorial restrictions on copying or deriving something that could be achieved by merely releasing one's work into the public domain to one of software governed by a licencing scheme that would forbid authors of derivative works from imposing restrictions on the distribution of their derived works that had not been imposed on the distribution of the original code. The core of Stallman's "copyleft" General Public License (GPL), under which GNU/Linux and a lot of other free software are now released, is to prevent the "prioritisation" of derivative software.

On the other hand, proprietary software distributed for free, such as the Internet Explorer web browser, is nonetheless not "free." The GPL stipulates that any distribution of a covered programme (for instance, one whose author used another's GPL-licensed code to create it) must make the program's corresponding source code easily accessible.[26] In order to protect the creator's legal right to ban the use of source code in new works, proprietary software has traditionally only released the object code without the source code. This has served as a

[26] *Id.*

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technical barrier to unauthorised usage. Nevertheless, these technical and legal factors can be analysed independently.[27]

The fact that a proprietary company can stand behind the provenance of its code is more significant from a legal standpoint, both because it is assumed to have originated in known and controlled conditions and because the lack of accompanying source code makes it difficult to check the firm's offerings for signs of theft, whether from other proprietary companies or from copylefted, publicly accessible software. The idea behind copyleft was to utilise copyright (and the availability of related licencing terms) to "guard" free software from being subject to more onerous copyright restrictions by people who added their code to the original software and then redistributed the finished result. Even before a subsequent work incorporates enough code from a copylefted programme to be deemed a derivative work, copyleft's restrictions may still apply because Stallman's licence is meant to include any work "that in whole or in part contains or is derived from the Program or any part thereof."[28]

The contemporary information technology environment has accepted the competitive sectors of software products over many years. These spheres can be generally organised around two poles engaged in a power struggle in the area. Proprietary software is present on one side, which often gives the user access to cash and carries features. Technically, its source code "recipe" is almost always concealed from view, and legally, independent programmers cannot use it to create new software without the sporadically granted consent of its unitary rights holder.

The development of microcomputer operating systems is where the model conflict is currently playing out most visibly. This is due to the fact that both models have produced enormously popular operating systems, some of which are functionally quite similar (like the free GNU/Linux and various proprietary Unixes on the one hand and Microsoft Windows on the other), and others of which are largely incompatible and necessitate path-dependent commitments by users to one or the other. The stakes in the competition over operating system adoption are especially high because of horizontal network effects, which mean that widely adopted operating systems can snowball into even further adoption and because successful operating system makers can seek advantages in the marketing and sale of vertically related applications or hardware tied to the operating system. Such intense competition provides additional incentives for one side to advance or fund claims of legal impropriety against the other.

For instance, the case of ***SCO Group*** v ***International Business Machines Inc***,[29] reflects a significant legal conflict between the worlds of free and proprietary software at a time when control of operating systems used to run Internet servers is actually up for grabs. The original Unix operating system, developed in 1969 at Bell Labs, has several exclusive intellectual property rights that have been transferred to SCO through a fairly convoluted chain of title. The original Unix operating system, developed in 1969 at Bell Labs, has a number of exclusive intellectual property rights that have been transferred to SCO through a fairly convoluted chain of title. The GNU/Linux operating system was purposefully built by others starting in 1984 to be functionally comparable to Unix but completely non-proprietary. It was written with "new" code, so it could not be claimed that any of its source code formulae was borrowed from or inherited from Unix.

Despite the fact that it was understood that these changes could not be prioritised by the contributing firms, several companies saw a strategic advantage in making contributions to

[27] Bixler and Taylor, *supra* note 21.
[28] E. A. Crowne & V. Arman, *Copy-right-brain v left-brain: the use of musicologists in Canadian copyright infringement cases*, 6 JOURNAL OF INTELLECTUAL PROPERTY LAW & PRACTICE 821 (2011).
[29] SCO GROUP INC. v. INTERNATIONAL BUSINESS MACHINES CORP, Case No. 2:03cv00294 DK | D. Utah, Judgment, Law, casemine.com, HTTPS://WWW.CASEMINE.COM, https://www.casemine.com/judgement/us/59147840add7b049343e2670 (last visited Feb 10, 2023).

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the GNU/Linux code base in the late 1990s.[30] The dispute started when SCO asserted that IBM had broken their agreement with SCO by illegally contributing code to GNU/Linux that originated from Unix (specifically, IBM's own licenced proprietary variant of Unix called AIX), "poisoning" GNU/Linux in ways that violated state unfair competition and trade secret laws.[31] SCO has cancelled IBM's licence to sell AIX and is suing the company for billions of dollars in damages (which IBM claims SCO cannot do).[32] SCO has requested that every organisation using GNU/Linux pay hundreds of dollars in licencing fees to SCO and agree not to modify or redistribute GNU/Linux source code in the interim under threat of general legal action.[33] The specific code that is allegedly the subject of the theft has not yet been made public.

People, like the licence for a Unix variation called BSD, allow others to build upon the underlying software without passing on the associated "copyleft" restrictions, going beyond the universal attribute of enabling others to build upon the base code and disclose the output.[34] The only significant way that the BSD licence differs from a fully public domain release is that it demands a specific form of attribution for the original author whose work the new application is based. Typically, these works are referred to as "open" rather than "free," or if "free," they are qualified with "but not copyleft."[35] Other licences permit new derivative works exclusively in accordance with some type of copyleft restriction, but they differ on the need that "nearby works" those that are linked to the licenced code but are not physically incorporated into it also adhere to copyleft.[36]

COPYRIGHT OR COPYWRONG IN MUSIC

The commonality of evidence viewpoints in situations where authorship and infringement are in question may have a historical justification. Since the concepts of the author and the work are inextricably linked in copyright, the processes of creation and appropriation become so pliable in practice that they frequently borrow terminology from the same discourses of originality.[37] On the one hand, the composer's creative process may be looked at in situations of infringement in order to spot musical cliches and afterwards clarify the work protected by copyright. On the other hand, situations involving the distinction between authorship and performance also involve the issue of a work that is protected by copyright. But the most important distinction between the contexts is their diverse temporalities, which explains their various conceptions or interpretations of what constitutes a copyrighted work.[38] Contrary to the authorship dispute, which frequently views the work in retrospect, an assessment of infringement frequently entails an appraisal of the work in the present.[39] Even if these temporalities are different when attempting to compare the two works, the issue of derivation is the threshold of admissibility for past event narratives in copyright infringement claims.[40]

Astonishingly high quantities of money can be at stake in intellectual property issues.[41] Most musicians do not understand copyright issues.[42] They have an effect on everyone, from the tape recorder owner who wants to replay a broadcast or keep a borrowed deleted record alive to the music teacher who needs to replicate or copy symphonic or choral parts or adapt a piece for his small ensemble.[43] Making

[30] Gabriella Coleman, *CODE IS SPEECH: Legal Tinkering, Expertise, and Protest among Free and Open Source Software Developers*, 24 CULTURAL ANTHROPOLOGY 420, 420 (2009).
[31] *Id.* at 421.
[32] Coleman, *supra* note 30.
[33] *Id.* at 423.
[34] *Id.* at 426.
[35] Ravi Sen, Chandrasekar Subramaniam & Matthew L. Nelson, *Determinants of the Choice of Open Source Software License*, 25 JOURNAL OF MANAGEMENT INFORMATION SYSTEMS 207 (2008).
[36] Ågerfalk & Fitzgerald, *Outsourcing to an Unknown Workforce: Exploring Opensourcing as a Global Sourcing Strategy*, 32 MIS QUARTERLY 385 (2008).
[37] Jose Bellido, *Forensic Technologies in Music Copyright*, 25 SOCIAL & LEGAL STUDIES 441 (2016).
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] CAROLINE W., SPANGENBERG & J. STEPHEN BERRY, *Copywrong: Insuring against intellectual property losses*, 9 AMERICAN BAR ASSOCIATION, 32 (2009).
[42] Ela Gezen, *Intersections of Music, Politics, and Digital Media: Bandista*, 44 NARR FRANCKE ATTEMPTO VERLAG GMBH CO. KG, 437 (2011).
[43] Stanley Sadie, *Copyright or Copywrong?*, 107 MUSICAL TIMES PUBLICATIONS LTD., 119 (1996), https://www.jstor.org/stable/951615.

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a private recording, or a tape, of a recording that is less than 50 years old is illegal, which is the most significant aspect here for regular music enthusiasts. If the original album is still available for purchase, this appears reasonable; nevertheless, when a crucial element has been removed, it seems less reasonable.[44] Could one of your readers shed some light on a topic that occasionally intrigues me? Not long ago, I witnessed the choir performing a classical piece from scores in a style comparable to that of a broadcast concert (shall we say) ***'Ay Yar Sitamgaar Shina published by SHAESTA JANAN***,[45] simultaneously the same song as '***Aye Yar Sitamgar by Salman Paras and Nashwa'.*** Published by Salman Paras.[46] Do royalties go to Shaesta Janan, whose edition simply follows the composer's text, or to Salman Paras and Nashwa, who own the song rearrangement of it? Or are there none?

Likewise, chancing to hear the song ***'Sitamgar', published by Naghma,*** and at the same time ***'Sitamagar'. Published by Mashal Production.*** then it seems to me that our present law is almost designed to invite abuse. Similarly, having to hear the similar composition of song '***yar Sitamgar' by Zeshan Kamal.***[47] It is okay to practise, but not to perform! The complexity of the copyright issue will have been clear to readers. Whatever side of the fence you happen to be on, the fundamental tenet of copyright is: "What is worth copying is worth preserving."[48] There are so many similarities and infringements in the song of 'STIMGAR'. Digital infringement is the major threat that looms in the world of copyright, which also infringes intellectual property rights. Whether the proprietor will get the relief depends on the fact of the case; sometimes, it is the 'only' ground court that wants it to be proved. However, how does one go about demonstrating copyright violation in a court of law? The obvious difficulty is that music's worth is in the "ear of the beholder": much like music's creation, how it is perceived by an individual is intrinsically subjective. Aside from overt copying, infringement (even if accidental) is more likely to occur on a subtler level. What constitutes a 'substantial part' is a question of fact, and, in this respect, the courts have emphasised the quality of what was taken from the original work rather than the quantity. According to Emir Aly Crowne and Varoujan ArmanThe following factors is taken into consideration by the court in case of Music infringement:[49]

(a) the calibre and quantity of the material taken;

(b) the degree to which the defendant's use interferes with the plaintiff's activities and reduces the value of the plaintiff's copyright;

(c) whether the material taken is the proper subject of copyright;

(d) whether the defendant intentionally appropriated the plaintiff's work to save time and effort; and

(e) whether the material taken is used in the same or similar ways as the plaintiffs.

Neudorf v ***Nettwerk Productions***[50]

The plaintiff Neudorf filed a lawsuit in this case involving Sarah McLachlan,[51] a well-known Canadian singer and songwriter, asking for a declaration of co-ownership in the songs on her album "Touch" as well as damages for unjust enrichment and breach of contract for the work he did on McLachlan's second album, "Solace," and for a declaration of co-ownership in the songs on her third album, "Solace." Four of the tracks, according to Neudorf, had his input in their creation and arrangement. He was just employed to help with the recording of

[44] *Id.*
[45] AY YAR SITAMGAAR SITAMGAR SHINA NEW SONG SHINA SUPER HIT SONG 2019 GB TV WITH NAMI YOUTUBE, (2019), https://www.youtube.com/watch?v=GzYfI2C5Pik (last visited Feb 10, 2023).
[46] AYE YAR SITAMGAR, (2020), https://www.youtube.com/watch?v=dMHUzSCi3lk (last visited Feb 10, 2023).
[47] YAR SITAMGAR;SITAMGAR PASHTO SONG:SITAMGAR PASHTO SONG DANCE;PASHTO SITAMGAR SONG, (2019), https://www.youtube.com/watch?v=vP4diYhUJDc (last visited Feb 10, 2023).
[48] Graham Stephens, *Copyright or Copywrong?*, 112 MUSICAL TIMES PUBLICATIONS LTD., 1071 (1971), URL: https://www.jstor.org/stable/954918.
[49] Crowne and Arman, *supra* note 28.
[50] BCJ No 2831 (1999)
[51] DARRYL NEUDORF V. NETTWERK PRODUCTIONS LTD, 117 REPORTS OF PATENT, DESIGN AND TRADE MARK CASES 935 (2000).

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McLachlan's ideas, the defendant record label that signed him said. Because Neudorf was asserting collaborative authorship of the songs with McLachlan, this case differed from typical copyright infringement cases in that strict copying was not proven. Dr. Eskelin, a music education expert and professor at Los Angeles Pierce College, served as the plaintiff's expert witness. Dr. Eskelin responded when asked about the process of shared authorship, saying that even if one musician thinks the ideas of the other musician are useless and shouldn't be included in the work, those ideas nevertheless have an impact on the creative process and can influence the final product. During cross-examination, Dr. Eskelin added that what actually occurred was what mattered, not what the parties believed to be happening.[52]

The court dismissed Dr. Eskelin's method of collaboration since it implied neither that the parties intended to collaborate nor that the putative joint author had to provide creative expression. The court advised that the test for joint authorship should instead focus on whether the plaintiff significantly contributed original expression to the songs and whether, if so, both parties intended that their contributions would be combined into a single work and that the other party would be a joint author.[53]

The law of copyright protects a wide range of artistic creations, including those that are conceptual, written, recorded, visual (such as paintings or pictures), or any combination of these (such as scientific or theoretical). All reproduction, distribution, exhibition, modification, adaptation, and derivation rights are reserved by the author, artist, or creator of these works.

To understand the concept of copyright infringement, one must be aware of the privileges and limitations enjoyed by the owners of copyright to music. It is possible to reproduce and disseminate another person's work without breaking any laws, violating anyone's rights, or being held accountable in court. Even if you didn't steal anything with the intent or knowledge to steal it, you could still be held legally responsible.

CONCLUSION

Both the software industry and the legal profession have strong opinions about "Open Source" and "Free Software." The openness and collaborative workflow of open source are credited by proponents with enabling the development of more durable software at a minimal overall cost to society. On the other hand, some staunch opponents of open source assert that by using "viral" licences to forcibly open up proprietary systems, it usurps the constitutional protections for the promotion of intellectual property. Stallman left his job, and he immediately established the Free Software Foundation (FSF), which is today a global movement supporting the liberties. Stallman experimented with various copyright licences when developing the GNU system, each of which was intended to promote source code sharing and access. These licences had developed into the first iteration of the GNU General Public License by February 1989. The continued development of the GNU project was greatly helped by Stallman's work on numerous GNU applications, but it was his original copyright licence that would end up having the biggest impact on the free software movement. Fresh meat.net and Source Forge.net, two of the most well-known online repositories of free software, currently have 68% and 69% of their work licenced under the GPL, respectively. Only between 6 and 11% of free software users utilise the second most popular licence.[54] The GPL's motivating philosophy of software freedom, the fact that most software available under the licence was free to download, and most importantly—the fact that the license's reciprocal nature encouraged continued use of the work were the aspects of the licence that

[52] Neudorf v. Nettwerk Productions Ltd. et al., (1999) 26 B.C.T.C. 161 (SC), VLEX, https://ca.vlex.com/vid/neudorf-v-nettwerk-productions-681202441 (last visited Feb 10, 2023).
[53] Copyright in Ideas: Equitable Ownership of Copyright | CanLII, *supra* note 18.
[54] Hersb R. Reddy, *Jacobsen v. Katzer: The Federal Circuit Weighs in on the Enforceability of Free and Open Source Software Licenses*, 24 UNIVERSITY OF CALIFORNIA, BERKELEY, SCHOOL OF LAW, 301 (2009).

most significantly contributed to its widespread adoption.

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