Chapter 2

In Search of Pluralism

2.1   Diffusion and Appropriation

The first attempts to apply the free software model into a non-software context, came naturally from fields where free software ideas had been circulated, namely computer science. One of the earliest example that I could find is the 1994 Free Music Philosophy (FMP), by musician and computational biologist Ram Samudrala, who then defined the project as following:

> What is the Free Music Philosophy (FMP)?
>
> It is an anarchistic grass-roots, but high tech, system of spreading music: the idea that creating, copying, and distributing music must be as unrestricted as breathing air, plucking a blade of grass, or basking in the rays of the sun.
>
> What does it mean to use the term "Free Music"?
>
> The idea is similar to the notion of Free Software, and like with Free Software, the word "free" refers to freedom, not price. Specifically,

> Free Music means that any individual has the freedom of copying, distributing, and modifying music for personal, noncommercial purposes. Free Music does not mean that musicians cannot charge for records, tapes, CDs, or DATs.[1]

As for the distribution terms, they are quite crude but partly mimic free software licensing, except for the commercial use:

> Permission to copy, modify, and distribute the musical compositions and sound recordings on this album, provided this notice is included with every copy that is made, is given for noncommercial use. If you obtained this by making a copy, and if you find value in this music and wish to support it, please send a donation based on whatever you thought the music was worth to the address given on this notice.[2]

The other important example of such appropriation was with Michael Stutz, one of the first writers and journalists reporting on Linux and open source, who in the mid nineties published his entire website including his clip art gallery under the GPL,[3] and was, also as early as 1994, the first to use the GPL outside the scope of software.[4] He explained that anyone deserved the freedom provided by the copyleft license, and that it represented a "resource for all artists and scientists who work with digital information."[5] In his short 1997 electronic essay *Applying Copyleft To*

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1   Ram Samudrala, "The Free Music Philosophy," 1994, https://web.archive.org/web/19970101121210/http://www.ram.org/ramblings/philosophy/fmp.html.
2   Ibid.
3   Michael Stutz, "DESIGN SCIENCE LABS CLIP ART LIBRARY," 1997, https://web.archive.org/web/19970213052359/http://dsl.org/cal.html.
4   Antoine Moreau, "Le Copyleft Appliqué à La Création Hors Logiciel. Une Reformulation Des Données Culturelles ?" (PhD thesis, Université Nice Sophia Antipolis. École Doctorale Lettres, Sciences Humaines et Sociales. Sciences de l'Information et de la Communication, 2011), 473.
5   Michael Stutz, "/Doc/Comp/Gnu/," 1997, https://web.archive.org/web/19970617151849/http://www.dsl.org/m/doc/comp/gnu/.

Non-Software Information, he justified his choice by saying that "certain restrictions of copyright - such as distribution and modification - are not very useful to 'cyberia,' the 'free, apolitical, democratic community' that constitutes the internetworked digital world."[6] At the time he believed that the GPL provided the answer to the issue for software matters and noted that "it appears that the same License can be easily applied to non-software information."[7]

But if the GPL seemed adequate at first, as the diffusion of free and open source software licensing progressed, the need for the licensing of other things than software became more prominent. So 1998 saw the birth of another effort to provide a more articulated licensing option for non-software works. In that year, with the help of Stallman and Raymond, David A. Wiley, who was at that time working on a doctoral degree in Instructional Psychology and Technology at the Brigham Young University, tweaked the GPL and released the *OpenContent License.* The incentive for Wiley to release this license stemmed from his personal desire to share his teaching material, so they can be reused by others, circulated for free, and also be properly attributed and responsibly modified.[8] The idea to create a general license that made the bridge between the free software philosophy beyond software itself was a novelty, and was one step further from the fist landmark established with the FMP terms

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6 Michael Stutz, "Applying Copyleft to Non-Software Information," 1997, http://www. gnu.org/philosophy/nonsoftware-copyleft.en.html.
7 Ibid.
8 Lev Grossman, "New Free License to Cover Content Online," *Time*, 1998, http://web.archive.org/web/20001010034324/http://www.time.com/time/digital/daily/0,2822,621,00.html.

in 1994. Lev Grossman who interviewed Wiley for Time magazine concluded his column wondering whether or not free content, "open-source [sic]" novels and free concept albums would one day take over the world.

But Wiley's effort were not isolated. In fact as early as 1998, each in their respective domains, artists, musicians, designers, activists, scientists, had started to write their own licenses, for works distributed most of the time on a border-less Internet, yet attached to localised concerns and jurisdictions. For instance the following licenses reflected on the ideas of freedom and openness within their own practice, often with a growing distance from the free and open source software context:

- the OpenContent License (1998);
- the Licence Publique Audiovisuelle (1998);
- the Licence Association des Bibliophiles Universels (1999);
- the Comprehensive Open Licence (1999);
- the Counter Copyright notice (1999);
- the Design Science License (1999);
- the Free Document Dissemination Licence (1999);
- the GNU Free Documentation License (1999);
- the IDGB Open Book Open Content License (1999);
- the License Publique Multimedia (1999);
- the Linux Documentation Project Copying License (1999);
- the Open Publication License (1999);
- the Open Directory License (1999);
- the Open Resources Magazine License (1999);
- the W3C Document Notice (1999);
- the Ethymonics Free Music Licence (2000);
- the Free Art License (2000);
- the Freedom CPU Charter (2000);
- the GNU Free Documentation License (2000);
- the Licence ludique générale (2000);
- the Licence pour Documents Libres (2000);
- the Licence Publique de Traduction (2000);
- the Open Game License (2000);
- the Trackers Public License (2000);
- the Common Documentation License (2001);
- the EFF Open Audio License (2001);

- the HyperNietzsche Licenses (2001);
- the Open Music Licenses (2001);
- the Simputer General Public License (2001);
- the Academic Free License (2002);
- the CopID notice (2002);
- the Mnémosyne Free Dissemination License (2002).[9]

The amount of novelty licenses created just within four years, shows the highly active cultural diffusion occurring at the time. Stutz, who defended the use of GPL for non-software, will also eventually abandon the emblematic FSF license and write his own Design and Science License in 1999.[10] The peculiarity of all these endeavours, is in the fact that they are all driven by different understandings of what freedom and openness means in the context of culture and knowledge.[11] Even though it would be quite a daunting effort to precisely analyse each of these in order to understand these differences, in Chapter 3 I will take the 2000 Free Art License (FAL) as a case study, in order to show how the cultural depth and the ramification of the community template of free and open source software actually works when it is claimed by other groups, ideologies and practices. So essentially, all these licenses are efforts to claim a semantic territory, a particular definition of cultural freedom and the words that can be used to articulate it. Ultimately, this snowball effect demonstrates the victory of Stallman to transform how licensing is perceived:

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[9] For the full text of these licenses, as well as a short explanation about the selection, see Appendix: Selection of Proto-Free Culture Licenses.

[10] See Michael Stutz, "Open Source Beyond Software," 2000, https://web.archive.org/web/20000815061009/http://oreilly.linux.com/pub/a/linux/2000/08/01/LivingLinux.html.

[11] Not to mention its commercial and non-commercial implication, which is another can of worms I will briefly open and then attempt to close in the second part of the thesis.

the inhibitory aspect of the license now becomes an expressive tool to empower and materialise various ideologies. As a result though, the sudden growth in cultural scope, urge the need to guide, make sense of, and help navigate within all these new free and open groups and efforts.[12]

As pointed out with early and later critiques of license proliferation,[13] the noise created from all these subcultural groups is not necessarily a positive mechanism of semantic disorder.[14] However, all these licenses become effectively new *language-games* with accidental *family resemblances*,[15] and help enrich discussion around cultural freedom. Said differently, beyond the apparent common universality that seem to connect them under the umbrella of openness and freedom, they each have their distinctive features, as a result of adapting to their needs the free and source software template. So if such a pluralistic approach to cultural freedom and openness appears to mimic the dynamics of liberal democracy, its discursive mechanism as a whole does not belong however to the principle of aggregation, where voting is linked to free market economics by giving the ability to the individual to choose for societal matters,[16] neither it fits with the principle of deliberation, that gives preference to

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[12] For instance Lawrence Liang, *Guide to Open Content Licenses* (Rotterdam: Piet Zwart Institute, Institute for Postgraduate Studies; Research, Willem de Kooning Academy, 2005).

[13] Laura Majerus (chair) and the members of the LP Committee, "Report of License Proliferation Committee," research report (Open Source Initiative, 2006), https://web.archive.org/web/20070719020858/http://www.opensource.org/proliferation-report.

[14] Hebdige, *Subculture*, 90.

[15] In reference to the concepts from Austrian-British philosopher Ludwig Wittgenstein. See Ludwig Wittgenstein, *Philosophical Investigations* (1953; repr., Oxford: Basil Blackwell, 1986).

[16] Anthony Downs, *An Economic Theory of Democracy* (1957; repr., Boston: Addison Wesley, 2001); Joseph A. Schumpeter, *Capitalism, Socialism, and Democracy* (1950; repr., London: Routledge, 2005).

discussion and debate in the form of public discourse ethics.[17]

In fact, and I will return to this point several time throughout this thesis, this particular phenomena could be best explained under the model of radical democracy, coined by political theorists Ernesto Laclau and Chantal Mouffe,[18] and more precisely the model of *agonistic pluralism*.[19] By this, and rephrasing Mouffe's description in the context of this apparent balkanisation of licensing, I mean to say that through the lens of agonistic pluralism, the sudden proliferation of licenses is not a by-product of competition, but instead the emergence of identity politics within the not so diverse cultural context of free and open source communities. By rallying under several new licenses, these different groups have been able to cohabit, and as a whole, all these endeavours should therefore be understood as the interaction between several political adversaries, treating each other, and this is very important, as legitimate opponents on the common ground that is cultural liberty and equality, and yet disagreeing on the way to implement it.[20] What is more, and to be sure, such passionate disagreements cannot be resolved with deliberation and rationale discussion,[21] and this is fine and indispensable, as according to this model, democratic systems depends on the multiplication of discourse, and the diversity of language-games and their matching organisations, collectives, institutions, which are illustrated in this sub-section

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[17] See Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge: MIT Press, 1996); John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1999).

[18] Laclau and Mouffe, *Hegemony and Socialist Strategy*.

[19] Mouffe, "For an Agonistic Model of Democracy (2000)."

[20] Ibid., 203.

[21] Ibid., 203.

and later on in this thesis.

Under such a model, I want to stress that it becomes therefore questionable that critiques of license proliferation and incompatibility between these documents, are universally representative attempts to protect cultural freedom and openness as a whole. The same can be said more generally of the *copyright atomism* that results from the ever increasing proliferation, distribution, and fragmentation of copyright.[22] Instead, these critiques should be best understood as the expression of threatened hegemonic forces.

2.2   Prototyping Free Culture

In 2002, an important change is about to happen. Even though both the impressive legal literacy acquired,[23] and the collective intelligence produced, by all the participants of the rapidly expanding field of all things free and open, has allowed for the writing of all sorts of licenses, the *real professionals* of the law are about to step into these communities of practices, thereby threatening not only the existence of such communities, but also the ability to establish common questions and reflect collectively about these.[24]

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[22] See Molly Shaffer Van Houweling, "Author, Autonomy, and Atomism in Copyright Law," *Virginia Law Review* 96, no. 3 (2010).

[23] Coleman, "Code Is Speech," 433.

[24] Isabelle Stengers, *Au Temps Des Catastrophes: Résister À La Barbarie Qui Vient* (Paris: La Découverte, 2009), 119, p. 177.

The professional argument is that even though anyone is free to write their own license, it is a whole different story to make sure the license is actually a legally sound document, which could effectively be useful if ever challenged in relation to intellectual property laws. So in this logic and given the growing jungle of licenses, the documents that would come from the work and research of lawyers and law scholars should have in theory a better chance of receiving public attention. This is the claim and the bet taken in 2002 by the San Francisco based Creative Commons (CC) nonprofit organisation, which was started to provide a more generic approach to the issue of openness in culture. Unlike the free software model in which the GNU Manifesto, had set the ethical tone and direction for software freedoms and which eventually led to the creation of the GPL, CC further embraced the strategy of economics by providing, without substantial explanation, a collection of licenses to fit, according to them, every purpose. In regard to license proliferation to which such action clearly contributes, CC did not acknowledge any other effort but that of the FSF, and positioned itself as a complementary effort, not a competitive one, that would focus on scholarship, film, literature, music, photography, and other kinds of creative works,[25] basically all the domains in which free and open source software licenses, and derivatives, had been embraced since 1998.

There is of course a paradox in acknowledging on the one hand the pluralistic nature of licensing, and on the other hand ignoring four years of

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[25] Creative Commons, "faq," 2002, http://web.archive.org/web/20020518124323/http://www.creativecommons.org/faq/.

the effective agonistic pluralism described earlier. As a result, the question of identifying and organising family resemblances across all these communities stopped being accidental, and became instead a necessary means of survival, for those who could not identify themselves with the aggregative model offered by CC. As a matter of fact, this meta discursivity operating on top of licenses, had already started in 2001 with the concept of Open Source Intelligence (OSI)—not to be misunderstood with the Open Source Initiave (OSI) mentioned previously—which connected the free and open source software collaborative framework in the broader context of net culture:

> In the world of spies and spooks, Open Source Intelligence (OSI) signifies useful information gleaned from public sources, such as newspapers, phone books and price lists. We use the term differently. For us, OSI is the application of collaborative principles developed by the Open Source Software movement to the gathering and analysis of information. These principles include: peer review, reputation-rather than sanctions-based authority, the free sharing of products, and flexible levels of involvement and responsibility. [...] Projects like the Nettime e-mail list, Wikipedia and the NoLogo.org website each have distinct history that led them to develop different technical and social strategies, and to realize some or all of the open source collaborative principles.[26]

The same year, the community behind the *Manifesto de Hipatia*, who would also go beyond the original scope of user freedom and cooperation to link the free software philosophy to social and political activism through the value of knowledge access:

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[26] Felix Stalder and Jesse Hirsh, "Open Source Intelligence," 2002, https://web.archive.org/web/20021010023528/http://news.openflows.org/article.pl?sid=02/04/23/1518208.

> We propose the creation of a world-wide, popular, democratic or-
> ganisation to promote the adoption of public policies combined with
> human and social behaviour that favour the free availability and sus-
> tainability of, and social access to, technology and knowledge; their
> use for the common good; and the viability of the economic model
> which creates them, in terms of the equality and inclusion of all hu-
> man beings and all peoples of the world.[27]

Eventually several initiatives offered their own proto-free culture defi-
nitions. For example, the 2003 "four kinds of free knowledge" by Spanish
scholar Ismael Peña-López attempted to make a direct transposition be-
tween software freedom and knowledge:

- The freedom to use the knowledge, for any purpose (freedom
  0).
- The freedom to study how the knowledge applies, and adapt it
  to your needs (freedom 1). Access to the source information is
  a precondition for this.
- The freedom to redistribute knowledge so you can help your
  neighbour (freedom 2).
- The freedom to improve the knowledge, and release your im-
  provements to the public, so that the whole community bene-
  fits (freedom 3). Access to the source information is a precon-
  dition for this.[28]

Another effort focussed instead on the idea of openness: the Open
Knowledge Definition (OKD). The later is one of the projects of the Open
Knowledge Foundation (OKF), a nonprofit organisation founded in 2004
by Rufus Pollock, Martin Keegan, and Jo Walsh. It was created to promote
"the openness of knowledge in all its forms, in the belief that greater ac-

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[27] Mario Luiz Teza Teza et al., "Manifiesto de Hipatia," 2001, http://www.hipatia.net/
index.php?id=manifesto_es.
[28] Ismael Peña-López, "The Four Kinds of Freedom of Free Knowledge," 2003, http://
ictlogy.net/20031030-the-four-kinds-of-freedom-of-free-knowledge/.

cess to information will have far-reaching social and economic benefits."[29]

Their approach was originally based on what they call *the three meanings of open*: legally open, socially open, and technologically open. Unlike other initiatives that proudly exhibited their wishful affiliation with the FSF, the OKF instead affiliated itself with the OSI and the Open Access movement. And, just like the other groups critical of proliferation, it is on a mission to set the record straight when it comes to openness:

> The concept of openness has already started to spread rapidly beyond its original roots in academia and software. We already have 'open access' journals, open genetics, open geodata, open content etc. As the concept spreads so we are seeing a proliferation of licenses and a potential blurring of what is open and what is not.
>
> In such circumstances it is important to preserve compatibility, guard against dilution of the concept, and provide a common thread to this multitude of activities across a variety of disciplines. The definition, by providing clear set of criteria for openness, is an essential tool in achieving these ends.[30]

As might be expected, the OKF itself is thus directly derived from Perens' Open Source definition. The first version, v0.1, was drafted in August 2005 and v1.0 was released in July 2006. For the OKF to decide if a work is open or not, the latter must respect the following definition:

1. Access
2. Redistribution
3. Re-Use
4. Absence of Technological Restriction

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29 Open Knowledge Foundation, "Home Page," 2005, http://web.archive.org/web/20050209143117/http://www.openknowledgefoundation.org/.

30 Open Knowledge Foundation, "About - Open Knowledge Definition," 2006, http://web.archive.org/web/20060819200710/http://okd.okfn.org/about.

5. Attribution
6. Integrity
7. No Discrimination Against Persons or Groups
8. No Discrimination Against Fields of Endeavor
9. Distribution of License
10. License Must Not Be Specific to a Package
11. License Must Not Restrict the Distribution of Other Works[31]

At the time, the OKF definition, or OKD, "sets forth principles by which to judge whether a knowledge license is open" and "does not seek to provide or recommend specific licenses."[32] However they did mention that their wiki contained a license survey, and before the end of 2006 a new entry was added to the project website: "Conformant Licenses."[33]

Later on, in 2007, another adaptation of software freedom, the Free/Libre Knowledge definition, is released by the Free Knowledge Foundation (FKF), yet another group that clearly stands on a different ground from the one claimed by the OKF.

(0) use the work for any purpose
(1) study its mechanisms, to be able to modify and adapt it to their own needs
(2) make and distribute copies, in whole or in part
(3) enhance and/or extend the work and share the result.[34]

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[31] Open Knowledge Foundation, "OpenKnowledgeDefinition - Open Knowledge Foundation Wiki," 2006, http://web.archive.org/web/20060517215509/http://okfn.org/wiki/OpenKnowledgeDefinition.

[32] Open Knowledge Foundation, "The Open Knowledge Foundation - Open Knowledge Definition - Home" (Open Knowledge Foundation, 2006), http://web.archive.org/web/20060721021510/http://www.openknowledgefoundation.org/okd/.

[33] In 2006, the licenses that could qualify as Open Knowledge licenses were: the GNU Free Documentation License, the Free Art License, the Creative Commons Attribution License, the Creative Commons Attribution Share-Alike and the Design Science License.

[34] Free Knowledge Foundation, "Libre Declaration," 2007, http://web.archive.org/web/20081120001221/http://www.libre.org/communities/philosophy/libre-declaration.

Also worth mentioning was the definition from Willey in 2007, who had previously authored the OpenContent license. In this attempt, Wiley made a stronger distinction between rework and remix. It is also a twist on the four software freedoms, and in this case it has been renamed to the "4Rs Framework:"

> Reuse – Use the work verbatim, just exactly as you found it
> Revise – Alter or transform the work so that it better meets your needs
> Remix – Combine the (verbatim or altered) work with other works to better meet your needs
> Redistribute – Share the verbatim work, the reworked work, or the remixed work with others[35]

Next to the multiplication of definitions, the cultural diffusion discussed in this section shows that different readings of the free software template are possible. An important point of divergence, and close to the spirit of the *Manifesto de Hipatia* and the Open Source Intelligence concept, is to interpret the free software template as a model for large-scale productive social relations where generous collaboration can take place,[36] and not just a more effective and liberal form of efficient production and sharing. As early as 2002, projects such as the Brazillian network *MetaReciclagem* put forth the materialisation of critical appropriation of technologies for social change[37] in which DIY, copyleft, and consensus-based decision-making, helped approach free

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[35] David Willey, "Open Education License Draft," 2007, http://opencontent.org/blog/archives/355.

[36] Fabianne Balvedi, "Free Studios," in *FLOSS+Art*, ed. Aymeric Mansoux and Marloes de Valk (Poitiers: GOTO10, 2008).

[37] Felipe Fonseca, "Gambiarra: Repair Culture," 2015, https://efeefe-arquivo.github.io/livro/repair-culture/gambiarra/.

and open source software as a "cultural and critical take on the pervasiveness of relationships mediated only by economic values."[38] Similarly, this social dimension was also a deciding element in the creation of the *Estúdio Livre* project in 2005, a collaborative Brazilian Portuguese speaking network with a focus on the "breaking down of barriers between producer and consumer as an example of collective intelligence as well as of changes in aesthetic, economic and social paradigms in contemporary society."[39] Generally speaking, this proto-free culture era, saw the emergence of what Chilean sound artist Alejandra Maria Perez Nuñez called the *southern time* of free and open source software.[40] Inspired by the *Rhythmanalysis* collection of essays from French Marxist philosopher Henri Lefebvre,[41] she expressed the role of free and open source software in forging a culture that goes beyond software and exist outside of the "economical time of unlimited profit";[42] where new ways of learning, creating, and participating, offer an alternative to a dominant productive model of time. To be sure, and as noted by the artist, this southern time was "not so much about geographical locations as about frames of mind [...] that determines what is conceived as south,"[43] and this approach to free culture was thereby also shared in European hacklabs, art collectives and argued critically in the

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[38] Ibid.
[39] Balvedi, "Free Studios," 263.
[40] Alejandra Maria Perez Nuñez, "FLOSS, It's Relation to Southern Time," in *FLOSS+Art*, ed. Aymeric Mansoux and Marloes de Valk (Poitiers: GOTO10, 2008).
[41] Henri Lefebvre, *Rhythmanalysis: Space, Time and Everyday Life* (1992; repr., London: Continuum, 2004).
[42] Nuñez, "FLOSS, It's Relation to Southern Time," 281.
[43] Ibid., 281.

context of network politics.[44] Towards the end of the noughthies, free culture was therefore more than a chaotic collection of definitions and licenses, it was also the concrete manifestation of different ideas about society, structured and grounded by the free software template.

2.3   Defining Free Culture and the Decay of Pluralism

Today's most recognised definition is not to be found in any of the efforts listed in the previous section. It is in fact the last one released in this stream of prototyping: the 2008 definition for *Free Cultural Works*, but which nonetheless found its infancy in discussions started three years earlier. Indeed back in 2005, yet before the official release of the OKD, and in this context of growing concerns about the lack of uniformity for the freedom of non-software things, free software activist Benjamin Mako Hill started to openly criticise the definition-free approach offered by the "hodge-podge of pick-and-choose" features of CC licensing, indirectly addressing the limits of the undefined forms of engagement found in CC co-founder Lawrence Lessig's 2004 book, *Free Culture*, that I mentioned in the introduction of this thesis.

> [D]espite CC's stated desire to learn from and build upon the example of the free software movement, CC sets no defined limits and promises no freedoms, no rights, and no fixed qualities. Free software's success is built upon an ethical position. CC sets no such

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[44] Fonseca, "Gambiarra."

standard..[45]

As a self-fulfilling prophecy, this intention is carried on in a 2006 announcement from German freelance journalist Erik Möller and Hill himself, to work on such a missing definition:

> In the free software world, the two primary definitions - the Free Software Definition and the Open Source Definition - are both fairly clear about what uses must be allowed. Free software can be freely copied, modified, modified and copied, sold, taken apart and put back together. However, no similar standard exists in the sphere of free content and free expressions.
>
> We believe that the highest standard of freedom should be sought for as many works as possible. And we seek to define this standard of freedom clearly. We call this definition the "Free Content and Expression Definition", and we call works which are covered by this definition "free content" or "free expressions."[46]

This definition is written by several authors[47] using a wiki,[48] a MediaWiki installation to be precise, from the Wikipedia fame, and a powerful symbol of online collaborative writing dear to free and open source software communities.[49] In particular, the deliberative process follows a system put in place by Möller, and relies on a model loosely inspired from software production where a development branch co-exists with

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[45] Benjamin Mako Hill, "Towards a Standard of Freedom: Creative Commons and the Free Software Movement," 2005, http://mako.cc/writing/toward_a_standard_of_freedom.html.

[46] Erik Möller and Benjamin Mako Hill, "Announcement," 2006, http://freedomdefined.org/Announcement.

[47] Erik Möller, "Authoring Process," 2006, http://freedomdefined.org/index.php?title=Authoring_process&oldid=1303.

[48] The OKD was also drafted on a wiki.

[49] See Joseph Michael Reagle, *Good Faith Collaboration: The Culture of Wikipedia* (Cambridge: MIT Press, 2010).

a released branch. An invitation-only moderating group monitors the changes made by the wiki users on a page where an *unstable* version of the definition resides, and when consensus is felt to be reached on a point, the particular change is applied at the discretion of the moderators to the stable version of the definition.[50] As the name already implies, this definition is a transposition of the free software definition. According to their Frequently Asked Questions (FAQ), the definition applies to "works of the human mind (and craft)":

- the freedom to use the work and enjoy the benefits of using it
- the freedom to study the work and to apply knowledge acquired from it
- the freedom to make and redistribute copies, in whole or in part, of the information or expression
- the freedom to make changes and improvements, and to distribute derivative works[51]

Similar to the OKD, the free culture definition is introduced as being different from a license.[52] Instead it is presented as "a list of conditions under which a work must be available in order to be considered 'free' [and] a way to classify existing licenses."[53] Next to distinguish itself from licenses, the project also distances itself from the concept of manifesto, a form they qualify as "vague, broad, and very encompassing". The project aimed instead to provide a fixed reference point to free culture, one that

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[50] For the latest list of moderators, see Erik Möller, Benjamin Mako Hill, Geraki, Spiritia, Mormegil and Koavf, "Moderators," 2015, http://freedomdefined.org/Moderators.

[51] The Definition of Free Cultural Works project, "Definition of Free Cultural Works 1.0," 2007, http://freedomdefined.org/index.php?title=Definition&oldid=4582.

[52] Erik Möller, "FAQ," 2006, http://freedomdefined.org/index.php?title=FAQ&oldid=1425.

[53] Ibid.

could not be interpreted too freely, one that had to be restricted in order to build a common language and set a landmark, yet not as formal as legal code, hence the project name behind the definition: *freedom defined.* And just like the OKD, the free cultural works definition had no specific licenses to offer, but instead pointed to several already existing licenses that allowed the application of the four freedoms to the licensed work or expression. Similar to the licenses filtered by the FSF and the OSI, the overlap between freedom defined approved and OKF approved licenses is quite spectacular.[54] This should not come as a surprise. Just as a piece of GPL'ed source code can be independently articulated as either free or open source software, the *same* double inflection is carried with free culture and open knowledge. Hill,[55] who did not know about the OKD when he started to work with Möller, told me that there was some brief discussions about merging the projects, but there was a few barriers to do that. First, the specific naming and content of the free culture definition had been extensively discussed with Stallman and the FSF, Lessig and CC, and Wikimedia, to make sure they would endorse the project, and if they had called it *open knowledge definition* Hill believed that would have most likely lost some, probably all, of their support. Second, Between the two projects, there were too much structural and scope differences, with the OKF lacking in particular a model for being responsive to a broader

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[54] In 2006, the licenses that were considered fitting the creation of free cultural works are: Against DRM, Creative Commons Attribution, Creative Commons Attribution ShareAlike, Design Science License, Free Art License, FreeBSD Documentation License, GNU Free Documentation License, GNU General Public License, MIT License. Of the seven Creative Commons licenses at the time, only two qualified as free cultural licenses.

[55] Email to author, October 9, 2015.

community interested in free open cultural concerns.

I previously argued that the state of free culture in its early undefined and unnamed days, was neither of aggregative, nor deliberative nature, but had instead the potential to illustrate a successful model of agonistic pluralism and radical democracy in which conflict is not seen negatively, and where consensus is not blindly pursued. Borrowing the words from law scholar Lawrence Liang, the licenses of the proto-free culture era were more than legal documents, they were also "speech act[s]."[56] However, this situation changed completely with the rise of CC and the free culture definition, which suddenly permitted the two classical liberal democratic models to become once again dominant. Indeed, CC approached the licensing from an economic perspective, proposing their own broad free market of different in-house *professional* licenses from which copyright owners can choose, thereby building up some commons in an aggregative way where voting and Darwinist survival mechanism are put forth. At the opposite, the free culture definition built upon the meritocratic position of its initiators and experts turned moderators, to create a sort of Habermassian deliberative open platform for the public to contribute, and eventually establish a list of licenses the selection of which is based on ethical concerns. But in *both* cases, the notion of consensus that was not a primary concern in the proto free culture era, now becomes a tool for, respectively, an economic reform for immaterial property on the one hand, and on the other hand a contribution to the democratic narrative of the multitude, in which *the common* is constructed by

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[56] Liang, *Guide to Open Content Licenses V1.2*, 57.

spreading out singularities and where conflict is believed to become increasingly unnatural.[57] This process came at a cost however, which is the exclusion of all the groups the work of which did not match or did not matter for these federative platforms, as well as the disempowering of practicing communities, now guided by experts from the techno-legal field.

2.4   The Political Denial of Open Everything

> Free software movement was started in a capitalist society and has always existed in a capitalist society, there is no incompatibility between free software and capitalism. [...] We do not need to get rid of capitalism. Free software combines capitalist ideas, and socialist ideas, and anarchist ideas. It does not fit into any of those camps.[58]

It should become clear by now that free and open source software movements and initiatives, as well as the free culture phenomenon as a whole, are symptomatic of contemporary politics in which the ideas of cultural freedom and openness are stretched between on the one hand the post-political need to embrace a sort of consensus driven liberal democracy,[59] and on the other hand the diverging language games and family

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[57]   Michael Hardt and Antonio Negri, *Multitude : War and Democracy in the Age of Empire* (New York: Penguin Books, 2005).

[58]   RT, *Richard Stallman: We're Heading for a Total Disaster*, Online video (San Bruno: YouTube, 2012), https://www.youtube.com/watch?v=uFMMXRoSxnA.

[59]   Which manifests itself with the aggregation of all these licenses and their respective communities under diverse acronyms, such as Free/Libre and Open Source Software (FLOSS), see Ghosh and Glott, "Free/Libre and Open Source Software.", as well as labels and novel organisations related to all things open.