

Patterns of Sustainable Sharing Policy

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Sharing Policy under-girds the publication, access to, and re-use of Public Sector Information (PSI). Patterns of sustainable sharing policy that support realization of the economic and social potential of PSI requires long-term cooperation by a large number of stakeholders – an ecosystem, to use another metaphor.¹

Creative Commons (CC) desires such long-term cooperation because (1) such is necessary for the public sharing tools (mainly licenses) stewarded by CC to obtain their maximum socially beneficial impact² and (2) as a license steward, CC's role in the ecosystem is one with no tolerance for error *and* strong requirement for coordination with other stakeholders to avoid error: legal incompatibility across sharing tools (again, mainly licenses) is an “easy” way to shatter patterns of sustainable sharing policy, thus a high risk.

License stewards develop and maintain the public terms under which PSI is shared with the public (as a best practice; not sharing under public terms is a failure). CC stewards the most widely used licenses and public domain tools used for PSI (excluding the field of software, which is out of scope for this paper, though the free software ecosystem informs our thinking).³ Other license stewards include Open Data Commons (ODC) and any entity that invents its own public terms rather than using standard ones – becomes a license steward, intentionally or not.

Stewards would seem to face an insurmountable coordination problem – anyone in theory could “defect” and make up their own terms. Fortunately an entity undertaking to be a license steward mostly incurs costs and directly reaps few benefits. Put another way, costs of stewardship are internalized by the steward, while benefits, if any, are almost all externalities. Additionally, for a license to have any benefits whatsoever, it must be used. Adopters and policymakers who might be interested in using new licenses bear high search costs. Together, these factors may largely explain the relative lack of “defectors” or “license proliferators”.

1 The title of this paper is a blatant rip-off of “Patterns of Sustainable Specialization and Trade”, coined by Arnold Kling to explain his view of what makes an economy go (or stop); see http://econlog.econlib.org/archives/2011/02/what_is_economi.html. Rather than make a horribly stretched analogy to PSST, I merely wish to illustrate that realizing the potential of PSI requires good policy around sharing PSI, involving numerous entities that must remain coordinated to maintain good policy, and provoke a line of thought around what the sustainable patterns for maintaining such coordination consist of.

2 See <http://creativecommons.org/about> for CC's vision and mission.

3 See http://www.epsiplus.net/topic_reports/topic_report_no_23_creative_commons_and_public_sector_information

Over the past decade there has been a high degree of cooperation among license stewards. This has been highly visible in the software space, with a trend for all major free and open source software licenses to become compatible with the GPL from the Free Software Foundation (FSF).⁴ Outside of software, pioneering public copyright licenses from the Open Content Project and the Electronic Frontier Foundation have been retired with a recommendation to use and explicit upward compatibility with CC licenses, respectively.⁵ The FSF worked with CC and the Wikimedia Foundation to facilitate the migration of Wikipedia and its sister sites from the FSF's Free Documentation License (FDL) to CC Attribution-ShareAlike (BY-SA) as their main license in 2009. However, it is important to remember that a decade is the time-scale at which such cooperation plays out. Discussions concerning FDL/BY-SA compatibility occurred from 2004-2009 (and could well resume in the fullness of time, given that "only" a compatibility window for Wikipedia and other massively collaborative projects was achieved).⁶

The explosion of sharing of PSI and databases over the last few years have created new stressors. Some governments are prone to creating new licenses, while databases are different enough from other non-software works that they have attracted public licenses intended only for application to databases, from ODC. Achieving a level of cooperation among CC and these new license stewards (who are not *primarily* license stewards) to achieve socially optimal outcomes is a major current challenge.

In order to ensure long-term patterns of sustainable sharing policy, we propose that as a community intent on maximizing the positive social and economic benefits of PSI, and of the commons generally, an open discussion and detailed examination of the following items:

- (a) Roles other than license steward, and their relations to each other, and to license stewards. These include normative and assessment standard (e.g., Open Knowledge Definition) stewards, open advocates, license adopters, platform providers, analysts, academics, standards bodies, policymakers, the general public, and the often robust and entrepreneurial competition to sharing: all varieties not sharing. Each of these roles are crucial. Most are not as fragile as that of license steward, but several have more potential for scalable impact, and all have potential for informing and guiding license stewards.
- (b) Requirements for legal interoperability, short- and long-term, and risks to the same. A key question is whether databases and other non-software works are wholly separate magisteria, or at least may be safely treated as such. If the answer is no (our current understanding), a single universal recipient license (i.e., a single widely used copyleft license, or the equivalent) for all non-software works, including databases, is crucial.⁷
- (c) Cognizant of developing answers to (a) and (b), what steps ought CC, other license stewards, and other stakeholders, *begin to take in 2011* to take advantage of opportunities for cultivating PSI and the commons, and for reducing risks to the same? We identify upcoming requirements for a version 4.0 of the CC license suite, and development of that versioning, as one key process in which major advances might be made.⁸ How can all stakeholders leverage this process? What are other key upcoming processes, events, and indicators?

4 See <http://www.dwheeler.com/essays/gpl-compatible.html>

5 See "License Deproliferation" in http://p2pfoundation.net/Free_Culture_in_Relation_to_Software_Freedom

6 See "Wikipedia/CC news: FSF releases FDL 1.3", <http://creativecommons.org/weblog/entry/10443>

7 It is a valid question to ask why it is acceptable to treat software separately. To some extent it is distinct from other kinds of works, or can be safely treated as such. Longer separation means achieving interoperability for software and non-software works is harder – but doing so anyway could be an important project in the distant future!

8 See "CC and data[bases]: hugh in 2011, what you can do", <http://creativecommons.org/weblog/entry/26283>