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**BALANCING CREATIVITY AND COMMONS: INDIAN ANALYSIS OF
MORAL AND ECONOMIC RIGHTS OF CREATORS IN FREE ART
LICENSING CULTURE**

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Abstract

To invite inventiveness and free sharing, creators are increasingly uploading their art to the public domain, fostering collaborative efforts that yield advanced results. Traditional copyright laws, based on the idea/expression dichotomy, aim to protect creators' rights. However, they have been criticised for creating monopolies that stifle creativity and restrict access to knowledge. Copyleft, exemplified by licences like the GNU General Public License, offers a balanced alternative that sustains digital commons, encourages participation, and democratises knowledge access. This paper traces the intricacies of free art licences, examining their historical roots, legal implications, and impact on the creative landscape. Through semi-formal interviews with developers and artists, the research illustrates how copyleft licences have impacted innovation, democratised information access, and challenged traditional notions of intellectual property. Free licences, such as those based on the Creative Commons model, expand access to creative works but face legal ambiguities within India's Copyright Act of 1957. While considering the moral and economic implications of free licensing in the Indian art market, assessing its impact on artists' livelihoods, traditional authorship notions, and the balance of creative expression, the authors advocate for an approach that fosters a vibrant creative ecosystem in India while ensuring fair recognition and compensation for creators. This research aims to provide various suggestions as well as how free art licences can practically function within existing legal systems and explore their potential to shape the future of artistic creation and dissemination.

Keywords: Copyleft, Copyright, Free Art Licensing, Creative Commons, Open Access.

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Introduction

Intellectual property (IP) encompasses copyrights, patents, and trademarks/ service marks, each governed by distinct laws. Generally, while each country has its own IP system, the core principles are similar. Copyrights protect original works in tangible forms, such as literature, music, art, and architecture. Copyright holders have exclusive rights to reproduce, distribute, and display their works, and to create derivatives.³ Brief, non-commercial use for criticism, news, education, or research is allowed under “fair use.”⁴ Works not under copyright fall into the public domain, free for public use.

*“Copyleft is ‘an agreement allowing the software to be used, modified and redistributed freely on the conditions that a notice to this effect is included with it.’”*⁵ First appearing in “Dr. Dobb’s Journal” in 1976, copyleft licensing began with software. Pioneered by Richard Stallman in 1983, a “complete Unix-compatible software system” that he intended to give away for free and exemplified by licences like the GNU General Public License copyleft leverages copyright law to ensure that software and its derivatives remain freely accessible and modifiable.⁶ In 1985, he founded the Free Software Foundation (FSF) to support the burgeoning free software movement centred around the GNU Project.⁷

In analysing the interplay between copyright and copyleft “software” merits special attention. The root of these two terms can be seen in the question of whether one seeks primary knowledge to expand the public knowledge or to generate rents out of it by private exploitation. The conceptions of both the terms are opposite to each other. Copyright is more restrictive in nature as it restricts the copy, distribution and modification of the work, on the other hand copyleft allows the use and modification of the software subject to the terms of the copyleft licence.

Copyleft is a practical safeguard to protect any software developments and open-source projects as it promotes innovation in these domains as it has become the need of the hour to evolve technology for benefit of the public at large. The duration of the copyleft licence lasts as

³ The Copyright Act, 1957 (Act 14 of 1957), s. 14.

⁴ *Id.*, s. 52.

⁵ Michael Stutz, "Applying Copyleft to Non-Software Information," *GNU Allegrius* (Oct. 29, 2005), available at <http://gnu.allegrius.com/philosophy/nonsoftware-copyleft.html>.

⁶ Jeffrey Pomerantz & Robin Peek, *Fifty Shades of Open*, 21 First Monday (2016).

⁷ Gordon D. S., Almeda M. V., & Cukurova M., “Scaffolding Group Work in the Classroom,” *Journal of Educational Technology Systems*, 43(2) (2016), available at <https://files.eric.ed.gov/fulltext/EJ1073128.pdf>.

long as the copyright on the original work lasts, which is lifetime and 60 years more after the death of the original creator of the work in India.⁸ Through copyleft scope of the rights expands benefitting the general public rather than single individuals.

Back in 2005 in the case of *Tata Consultancy Services v. State of Andhra Pradesh*.⁹ The supreme court of India states 'Software as an Intellectual Property' which will be covered under section 2(o) of the copyright Act 1975 under the definition of literary works which includes computer programs. Further the Act permits the creator of a computer program to issue copies of the work to the public not being copies already in circulation.¹⁰ Taking the section into consideration it is ambiguous as to whether the distribution should be free or not. This creates a way for software developers to further licence and re-distribute their software for free. Recognizing the ambiguity of the term "free," the FSF defined what it means for software to be free. The "share and share alike" principle, as articulated by Stallman himself, has influenced the free culture movement, extending its reach beyond software to encompass various creative domains.¹¹

Impact of Copyleft on The Free Culture in Artistic Works

As Coleman points out, "*modern free and open-source software groups are probably the largest single association of amateur intellectual property and free speech legal scholars ever to have existed.*" Thus, to know about the ground reality of the free culture, we interviewed Mr. Vraj Gohil, founder and CEO of DevSquirrel Technologies Pvt. Ltd., involved and responsible for all software development in the company. Mr Vraj highlights a common issue in the software development industry i.e. many developers are unaware of compliance requirements due to limited exposure to licensing. Typically, developers prioritise functionality and only consider licensing types after achieving their development goals.

When a codebase involves numerous or complex compliance requirements, developers often seek alternative licences, which are relatively easy to find. The legal consequences of non-compliance vary depending on the project's scale. If a major company's code is affected and their commercial interests are harmed, developers may face legal repercussions. Mr. Vraj believes that the persons in the field should at least have some basic knowledge of the

⁸ *Supra* Note 3, s. 22.

⁹ *Tata Consultancy Services v. State of Andhra Pradesh*, A.I.R. 2005 S.C. 371.

¹⁰ The Copyright Act, 1957 (Act 14 of 1957).

¹¹ Richard M. Stallman, "What Is Copyleft?" *GNU's Bulletin*, Vol. 1, No. 6 (1988).

conditions, natures, and legalities of such licences. For example, changing a software license from one with less compliance and more openness, such as the MIT license, to a more restrictive one is not straightforward and that all users must be informed of the change, and existing users can continue using the software under the original licence terms. For example, AWS's Elasticsearch changed its licence from open source to Proprietary. While new users must comply with the new terms, existing users continue under the old licence.

Mr Vraj confirms that while copyleft found its genesis due to software, a concept that has emerged due to it, Creative Commons (CC) is being used by creators to amplify collaboration in the digital era. The free culture movement has evolved significantly not only in the world of software development and licensing but also in other disciplines such as content creation, art, music, literature, etc. to collaborate with the likes of each other. Artists benefit from the Free Art License by being able to share their work without restrictive barriers, encouraging collaboration and creativity by allowing others to build upon their creations.

Unlike traditional copyright, which often restricts access to creative content, the Free Art License promotes openness and collaboration. Creative works such as literature, music, sound recordings, digital art, graphics, and educational materials can be licensed under FAL. The licence aims to enable the use of a work's resources while promoting principles of copyleft, such as the freedom to use, copy, distribute, and transform, while prohibiting exclusive appropriation. These licences don't always align seamlessly with the systems from which they originate and can be more complicated than they appear. Several companies provide stock images and audios which often are free from the bounds of traditional copyrights. Freepik, adobe stock, YouTube Music Library, etc. are some examples where other creators can use the 'Free Creations' along with rights such as modification and distribution. These tools often have their own licences and their terms overlap with existing CC licences. This creates confusion among the creators as it is back-breaking being able to adhere to every term of hundreds of licences. Free culture can either subjugate practitioners to a particular hegemony or open new possibilities for those who understand and create new techno-legal templates.

Free Art Licence: Unleashing Creativity Through Shared Ownership

In the digital age, the landscape of artistic creation and dissemination has undergone transformation. The rise of the internet and digital technologies has democratised access to creative tools and platforms, enabling artists to reach global audiences with unprecedented

ease. New era of artistic expression through Free art licence has emerged as a tool for creators seeking to navigate this evolving landscape, fostering a culture of sharing, collaboration, and innovation.

One of the earliest examples is the 1994 “Free Music Philosophy (FMP)” by musician and computational biologist Ram Samudrala.¹² FMP advocates for the unrestricted creation, copying, and distribution of music for personal, non-commercial purposes, similar to the concept of Free Software. Another notable example is Michael Stutz, who in the mid-nineties published his entire website under the GPL, extending its use beyond software. Stutz believed in “*the freedom provided by the copyleft license for all digital information.*” He argued that certain copyright restrictions were not beneficial to the “cyberia” community, advocating for the GPL's application to non-software information¹³.

“*GNUArt and the FAL two types of cultural appropriation of the free software template applied to the artistic domain.*”¹⁴ For the purpose of this paper let's focus on Free Art License. Vidovic was the first to articulate the term “*art libre*” and wrote about the need for a FAL as early as 1998. However, it wasn't until 2000 that *Mélanie Clément-Fontaine*, David Geraud, Isabelle Vodjdani, Antoine Moreau, and participants from a free art mailing list created the *Licence Art Libre (LAL)*, also known as the Free Art License.¹⁵ This document was designed as an artistic equivalent to the GPL, specifically for creating free art under French law, tailored to the French copyright system, le droit d'auteur.

The FAL serves as a critique and a method for creating art, inheriting the “playful cleverness” of copyright hacking. It is akin to the Ouvroir de littérature potentielle (OuLiPo) group, which used constraints to inspire creativity. Like OuLiPo “Cent mille milliards de poèmes,” the FAL sets rules for the Copyleft Attitude community to produce, and remix works collectively. Unlike GNUArt's bottom-up emergence, the FAL is a top-down approach inviting artists to engage in a structured game.¹⁶ It aligns with broader artistic practices using contracts for

¹² Aymeric Mansoux, “*Sandbox Culture: A Study of the Application of Free and Open Source Software Licensing Ideas to Art and Cultural Production*”(2017) (Ph.D. thesis, Goldsmiths, University of London) available at <https://research.gold.ac.uk/id/eprint/22606>.

¹³ Essay, ‘Applying Copyleft to Non-Software Information’ 1997.(Last visited on Aug 5, 2024).

¹⁴ Mirko Vidovic, GNUArt (2000),available at: <http://gnuart.org>.(Last visited on Aug 5, 2024).

¹⁵ License Art Libre 1.0 (2000), Copyleft Attitude.(Last visited on Aug 5, 2024).

¹⁶ Aymeric Mansoux, “*Sandbox Culture: A Study of the Application of Free and Open Source Software Licensing Ideas to Art and Cultural Production*”(2017) (Ph.D. thesis, Goldsmiths, University of London) available at <https://research.gold.ac.uk/id/eprint/22606>.

institutional critique, such as Duchamp's Monte Carlo Bond and Siegelau's the Artist's Contract. Artists like Carey Young and Jill Magid have similarly used contracts to challenge norms. Moreau sees the FAL as a practical legal tool, emphasizing its role in facilitating free art practices, though it can also be viewed as an artistic document.

Famous artists and institutions use C.C. licences to share their work while maintaining control over its use. For example, The J. Paul Getty Museum dedicated the iconic painting 'Irises, 1889' by Vincent van Gogh to the public domain using the CC0 (Creative Commons Zero) licence. This means the digital image of the artwork is unequivocally in the public domain, allowing unrestricted use and sharing.¹⁷ At the forefront of this movement is C.C., a non-profit organisation that provides a suite of free licences designed to empower artists and expand access to creative works.

Founded in 2011, C.C. offers licenses that let authors decide which rights to retain. Authors select a license based on which of these terms they want to include, resulting in the label "Some Rights Reserved" on C.C. works. With their standardised formats and user-friendly approach, they have become the gold standard for free art licensing. These licenses are built upon a modular system, allowing creators to mix and match various conditions to create a license that aligns with their specific preferences. The four core conditions, which form the building blocks of C.C. licenses are Attribution, ShareAlike, Non - Commercial and No Derivatives.

By combining these conditions, creators can choose from a range of C.C. licenses, each offering a different set of permissions and restrictions. For example, the Attribution-Non-commercial licence allows for non-commercial use and adaptation of a work as long as the original creator is credited. 'Move Under Ground', A horror novel mashup by Nick Mamatas, released under the CC BY-NC-ND (Attribution-Non-commercial-NoDerivs) license.

The Attribution-ShareAlike license, on the other hand, permits both commercial and non-commercial use and adaptation, provided that any derivative works are released under the same licence. 'Meat Atlas, A collection of graphs and 27 essays on meat consumption and production, created by Friends of the Earth and the Heinrich Böll Foundation. It's available under the CC BY-SA (Attribution-ShareAlike) license. Moreover, an ancient manuscript 'Archimedes Palimpsest', dating back to the 3rd century BC, was reconstructed and released by

¹⁷ Art, Creative Commons, *available at*: <https://creativecommons.org/tag/art/>. (Last Visited, Aug 5, 2024).
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OPenn as a Free Cultural Work under the CC BY (Attribution) licence. It's a fascinating glimpse into history and mathematics.¹⁸

Navigating Complexities of Free Culture in Digital Age

Traditional copyright laws, while intended to protect the rights of creators, often erect barriers to accessing and reusing creative content. The influence of free and open-source software (FOSS) on cultural production and practices has been significant, but adopting free culture licences can be complex. The Free Art License (FAL), or Licence Art Libre (LAL), is a copyleft licence that allows for the free copying, distribution, and transformation of creative works. The “all rights reserved” approach can stifle innovation, limit collaboration, and restrict the free flow of ideas. Free art licences, in contrast, embrace a “some rights reserved” model, allowing creators to grant specific permissions to the public while retaining certain rights. This approach empowers artists to determine how their work is used and shared, fostering a more open and collaborative creative environment.

The adoption of free art licences, particularly C.C. licences, has had a profound impact on the creative landscape. By lowering barriers to access and reuse, these licenses have fostered a culture of remixing, collaboration, and innovation. Artists can build upon each other's work, creating new and exciting forms of expression. Educators can incorporate freely licensed content into their teaching materials, enriching the learning experience for students. Researchers can share their findings more openly, accelerating the pace of scientific discovery. At present there are no specific provisions for copyleft in existence in any of the Laws governing Intellectual property rights in India, however copyleft licences are validated by the existing copyright Act.

Compatibility of FALs with the Indian Copyright Act of 1957 (as amended)

In India, particularly, the usage of copyleft is not managed by any of the statutory provisions, however the Indian Copyright Act does not expressly recognise open-source software, but it does protect the work by allowing the copyrighted work to enact a copyleft agreement to avail the benefit of copyleft licence in regard to the work. Section 14 of the Copyright Act regulates functioning of copyleft licensing agreements in India. A computer program's copyright holder

¹⁸Art, Creative Commons, *available at*: <https://creativecommons.org/tag/art/> (last visited Aug. 5, 2024).

has the ability “to issue copies of the work to the public not being copies already in circulation” under Sections 14(a) (ii) and 14(b) (i).¹⁹

The creators may obtain licences for re-distribution of their work for free under a copyleft agreement by using the ambiguity in Section 14, which is whether the distribution should be restrictive or free. Additionally, section 30 of the act grants the holder of the copyright with authority to licence “any interest” in his creations.²⁰ The rights which the holder transfers to the licensee are similar to the rights that the copyright assignee acquires. Though the copyright Act does not explicitly recognize open-source software, it provides adequate protection for the holder of the copyright to make a copyleft agreement within the legal framework of the country. Section 19(3) explicitly provides the licensor the option to licence his work.²¹ This is further safeguarded by Section 19(2) which requires the licensor to specifically mention the rights licensed, with the duration and the extent of it.²²

The issue is whether these copyleft agreements comply with contract law standards. A valid contract must contain the following elements: free consent, competent to contract, lawful consideration, lawful object and not specifically declared to be void.²³ Whether copyleft agreement satisfies each of these criteria is the question at stake. Certain facts must be met for the first two requirements free consent and contract competence to be met. The laws pertaining to the two previously mentioned topics are provided by contract acts with case laws and are case-specific. Whether or not the copyleft licence agreement contains consideration is the main point of disagreement. In general, consideration means the actions taken in exchange for the benefits outlined in the contract.²⁴

It is evident from this definition that consideration need not always take the form of money. In *Bhattacharjee v. Gorilla Mahomed*, in this case, the court stated that the agreement was binding, holding that the “consideration of faith was a valid consideration.”²⁵ A contract is not voidable for lack of sufficient consideration.²⁶ Therefore, valid consideration for the rights to use, modify, and distribute the software can be identified in a copyleft agreement that grants

¹⁹*Supra* Note 3, ss.14(a)(ii), 14(b)(i).

²⁰*Supra* Note 3, s. 30.

²¹*Supra* Note 3, s. 19(3).

²²*Supra* Note 3, s. 19(2).

²³Indian Contract Act, 1872 (Act 9 of 1872), s. 10.

²⁴*Id.*, s. 2(d).

²⁵*Bhattacharjee v. Gorilla Mahomed*, (1886) 14 Cal 64.

²⁶*Supra* Note 23, s. 25.

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later users the same rights as granted by the copyright holder and prohibits the creation of a proprietary model of the program. The contract act is satisfied because neither copyright law nor any other law in India has declared the copyleft licence to be invalid or unlawful. It is evident that a copyleft licence satisfies every prerequisite for being a legitimate contract. This renders any such licence legally binding as a contract. A licensee could be sued by the licensor for contract breach. The licensee can be sued by the owner of the copyright for copyright infringement.

Overview, rules and obligations regarding Free art licence (FAL)

Without violating the rights of the author, the Free Art License (FAL) permits free copies, distribution, and modification of creative works. These rights are recognized and safeguarded by the Free Art License. The Free Art License aims to enhance creative freedom by allowing unrestricted use, sharing, and modification of works, in contrast to traditional copyright laws that restrict access. It supports copyleft principles, enabling collaborative creation and broad distribution while ensuring the creator's rights are respected. With the rise of digital technologies and the internet, this license facilitates the integration and transformation of creative works, promoting shared contributions and preventing exclusive ownership.

Here, the creator of the work states the extent to which the work can be copied, distributed and modified. through this licence one can copy this work for personal use or for any other person and in whichever method. The rights granted by the licence cannot be contested by actions that give rise to the author's and associated rights. For instance, performances need to be covered by the same licence or a similar licence for this reason. Similar to this, using the work under the same terms as specified in this licence will not be hampered by incorporating it into a database, compilation, or anthology.

The rights granted by this license will not be challenged if the work is integrated into a larger work not covered by the Free Art License, provided the larger work is protected by an equivalent license or the Free Art License, and the original work is not accessible independently. The license takes effect when its terms are accepted, which occurs when the work is copied, distributed, or modified. The Free Art License remains in force as long as the copyright is active. If the license terms are breached, the rights it provides are immediately revoked. If any rights granted by the license conflict with governing legal statutes, those rights

will not be effective. The author can periodically update the license with new versions, and users can choose to accept the terms of a new version.

The license does not allow sublicenses, meaning that creators are directly responsible to anyone who wishes to use the rights it grants. An original copy of the work can be retained without any commitments, but once the Free Art License is applied, others cannot be prevented from using a copy of the work. Openness, not restriction and control over a work's future according to exclusive principles, is what free art is all about. During the Copyleft Orientation meetings at "Access Local" and "Public," two locations of contemporary art in Paris, FAL was created in July 2000. The Berne Convention for the Protection of Literary and Artistic Works (1886), which created a worldwide legal framework for literary and artistic rights, is ratified by all nations where FAL is in effect.²⁷

Facing Challenges: Moral, Economic and Legal

"There is always a well-known solution to every human problem — neat, plausible, and wrong." -H.L. Mencken²⁸

The Free Art License (FAL) emerged from an ongoing dialogue about art's nature, economics, and values. The license's constraints liberate artwork and artists from unauthorised appropriations. This approach is an attitude, not a movement, termed Copyleft Attitude for the meetings that birthed the FAL. The license encourages a collectivist approach to art production, providing an alternative to the traditional gallery system.

The Challenges of Moral Rights under Free Art Licence

Moral rights²⁹ aka "*Droit Moral*" in French,³⁰ do not provide direct financial benefits but prevent unauthorised modifications, preserving the integrity of the creator's work. first recognized in France and Germany, are enshrined in Article 27(2)³¹ of the Universal Declaration of Human Rights, 1948. The right of paternity ensures that creators are correctly attributed and protects against false attribution. Moral rights are inherent to the creator and their connection to the work. They exist whether a contract explicitly mentions or overrides them.³²

²⁷ Berne Convention for the Protection of Literary and Artistic Works, World Intellectual Property Organization, available at <https://www.wipo.int/treaties/en/ip/berne>.

²⁸ H.L. Mencken, *In Defense of Women* 158 (1918, rev. 1922).

²⁹ *Supra* Note 3, s. 57.

³⁰ *Droit Moral*, USLegal, available at <https://definitions.uslegal.com/d/droit-moral-entertainment-law/>.

³¹ Universal Declaration of Human Rights, 1948, art. 27.

³² *Mannu Bhandari vs Kala Vikas Pictures Pvt. Ltd. And Anr.*, AIR 1987 Delhi 13.
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Free art license, are essentially agreements and they don't transfer ownership or fully waive the creator's moral rights. These rights, which require crediting the original creator even when the work is modified or shared, helps prevent misattribution, although issues can arise if the attribution is not clear or meaningful.

The right of integrity, protecting against modifications that harm the artist's reputation, can be more complex. Artists may feel that changes to their work conflict with their original vision, potentially leading to confusion or misrepresentation. Creative Commons licences like CC BY and CC BY-SA allow modifications, which may concern some artists, but the attribution requirement can deter harmful changes. The CC BY-NC-ND license, which prohibits commercial use and derivatives, offers the most protection for integrity. The right of disclosure, concerning how and when a work is first made public, is not directly affected by free licenses. Artists retain control over the initial release of their work.

The overlap of terms between various free content licences can create confusion for creators trying to comply with multiple licensing terms. Even so there are no adequate remedies for the infringement of the copyleft contract, this unleashes the people's act of infringing the contract and taking undue advantage of the copyleft concept. According to the interview, it is quite evident that the user of the open-source software does not give attribution to the primary creator of the work as there are no strict regulations which would suggest a strict remedy for the same.

Morally, the Author of a work has to have a full control on the work he himself created, but due to the adaptation of the copyleft concept it becomes impossible for the author to track his work and to oversee that who, when, how and for what his original work is being modified and distributed in the public domain. The main motto behind this is to reduce the competition but many are of the opinion that it is completely anti-competitive as it results in capturing bigger share in the market, further as the scope of rights provided under copyleft are wider hence the right to bring up a suit of infringement of the holder of a copyright gets violated.³³ To address this issue a structured technologically based mechanism should be created as it will address maximum challenges in relation to the concept of copyleft as a whole. GPL is usually not enforceable as there is no proper mechanism for check and balances by the courts, this also amounts to a price fixing scheme.

³³ *0S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081, 1087 (9th Cir. 1989).
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Economic Rights in the Digital Age

Free licenses don't necessarily equate to zero income. While they allow others to use, adapt, or even sell copies (depending on the license) without paying royalties, artists retain some control. For example, CC BY-NC licences permit non-commercial use while allowing artists to sell their work commercially. It is beneficial for community and collaboration, but artists lose potential income if others commercially exploit work previously intended for sale. Reversing this course and charging for previously free work, even with updates or new versions, can be difficult too.

Additionally, unwanted commercial associations or perceived value reduction due to widespread availability can impact future sales and reputation. Despite these challenges, free licences offer significant benefits. Increased exposure can lead to commissions, collaborations, and sales of other works. Artists can leverage their skills and recognition gained through freely licensed work to generate income through merchandise, workshops, and other avenues. There are undoubtedly some advantages in keeping the software open for its distribution. For example, an organization, business, or even a private person may utilize an open-source product to address an internal issue, possibly with help from the community. If such modifications are publicly disclosed, the Individuals who make modifications that are publicly disclosed get a chance to gain profit from future modifications made by others who enhance upon the newly added functionality. There are ways in which this issue can be addressed.

Voluntary contributions are inefficient in generating funds. In some countries, many content-based sectors are funded by the government through organisations like the Corporation for Public Broadcasting, the National Science Foundation, and the National Endowment for the Arts. However, funding these activities with public money carries the risk of political interference, which could threaten freedom of expression and creativity. There's also uncertainty about whether the government will consistently provide adequate support given other budget priorities. The specific details related to the process of funding of the are being removed from the legislative process.³⁴

³⁴ A.J. Patton, *Why Do Mutual Fund Advisory Fees Vary? An Investigation into the Factors Affecting Mutual Fund Expense Ratios*, (May 2004) (unpublished Ph.D. dissertation, Massachusetts Institute of Technology).

The Multiplicity Dilemma

Multiplicity of licences available to the users only creates confusion. These tools providing open content often have their own licences and their terms overlap with existing CC licences. This creates confusion among the creators as it is back-breaking being able to adhere to every term of hundreds of licences. Choosing a free culture licence requires a clear distinction between practitioners who consciously adopt these systems and those who are pressured into them without fully understanding. The strength of free culture in simplifying cultural mechanisms as a shared techno-legal process may also be its weakness. Deeper analysis reveals varied interpretations and compromises. A proposed way to tackle this is clubbing the overlapping licences and building a better mechanism to ensure adherence to the same.

The choice of licensing model depends on the artist's goals and the specific context of their work. History demonstrates that new technologies often lead to unforeseen applications and evolving economic models. Free licenses, while impacting traditional revenue streams, can empower creators to engage with audiences, foster collaboration, and explore alternative paths to financial sustainability. The software industry has shown the most substantial adoption of the freedom to share concept through the Free/Open-Source movement. This provides benefits for innovation and diversity, but it also poses problems regarding compensation.

The Tracking Mechanism

In the interview, it was revealed that there is a lack of proper attribution to the creator when utilizing these licenses. Even when certain licenses fail due to improper attribution, and the work used becomes an infringement, there is no common tracking mechanism to determine who has used the work. The creation of such a mechanism could help regulate the unfair use of creators' work, ensuring that users cannot utilize the work without giving attribution or paying a certain consideration. According to the latest estimates, 402.74 million terabytes of data are newly generated, captured, copied, or consumed i.e., created each day.³⁵ The constant flow of new content online makes comprehensive monitoring nearly impossible. Additionally, the identities of the users should be provided to the original creator and the platform on which such works are licensed. We are of the opinion that there should be specific provisions related to these licenses in the existing IPR statutes, if it is not possible to regulate them through a special statute at this moment. Compensatory remedies should also be included in these provisions.

³⁵ Statista Research Department, Volume of Data/Information Created Worldwide, (2010 to 2025).
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In the recent Google I/O keynote event Google CEO Mr. Sundar Pichai said that “*Metadata allows content creators to associate additional context with original files, giving you more information whenever you encounter an image. We’ll ensure every one of our AI-generated images has that metadata.*”³⁶ This indicates that creating a tracking mechanism for works under a Free Art License (or similar open licences) involves ensuring that the works' metadata carries the necessary information to track attribution and detect violations. For this a standardised set of metadata fields that must be included with each work must be defined.

Metadata can be embedded directly into digital files such as images, audio, and video using appropriate standards like EXIF, IPTC, or XMP for images; ID3 tags for MP3s; XMP for WAV files; and Vorbis comments for OGG audio files. For videos, XMP or other video-specific formats are used, while Dublin Core is suitable for PDFs and other documents. When dealing with physical art, a QR code or similar marker can link to a digital record containing the metadata. Key metadata fields should include the name of the work, artist’s name, type of free art license, specific attribution requirements, creation and publication dates, a brief description of the work, and a unique ID such as DOI or UUID. Additionally, metadata should include the exact text for proper attribution, a URL linking back to the original work or repository, and a log of changes or modifications made over time. Any additional terms or requirements specified by the license should be clearly mentioned as well.

To detect unauthorised use of digital works, tools like Google Images or TinEye can be employed for reverse image search. Blockchain technology can be used to create immutable records of ownership and licensing, ensuring that metadata remains secure and untampered. Smart contracts can automate the enforcement of licence terms, tracking transfers, modifications, or commercial uses of the work. Digital certificates, stored on the blockchain, can be issued for verification.

Digital watermarking is increasing in the protection and management of intellectual property. This technique involves embedding information such as unique identifiers, copyright details, or ownership data into digital media like images, videos, or audio. What’s remarkable about digital watermarking is that this embedded information is imperceptible to the human eye or

³⁶Google Announces Use of IPTC Metadata for Generative AI Images, *IPTC* (May 10, 2023), available at: <https://iptc.org/news/google-announces-use-of-iptc-metadata-for-generative-ai-images/> (last visited Aug. 23, 2024).

ear, yet it can be detected and extracted by specialised software later. This not only helps in verifying the authenticity of a file but also ensures that the creator's rights are safeguarded.

Tools like Digimarc have become popular for embedding and detecting digital watermarks across various types of media. Adobe Photoshop, a staple in image editing, also offers robust watermarking features for images, allowing creators to embed their marks securely. For audio files, VST Plugins are commonly used, offering similar protection for sound recordings. These tools enable creators to embed vital information directly into their digital files, ensuring that their intellectual property is traceable and verifiable. Visible watermarks, such as logos or text overlays, are straightforward and easily recognizable. While they provide a clear indication of ownership, they can be removed or altered, making them less secure.

Digital watermarks are prone to challenges regarding their vulnerability to removal or alteration by malicious users using readily available software, which compromises content integrity and tracking. To address this, many creators now use invisible watermarks that are harder to detect and remove, requiring specialized tools. Invisible watermarks are embedded within the media file itself, making them invisible to the naked eye. These watermarks offer greater security because they are harder to remove without significantly degrading the quality of the media. However, these solutions are not foolproof, as automated detection systems can generate errors, such as false positives or false negatives. Additionally, inconsistent copyright laws across countries make it difficult to enforce watermark protections globally.

Digital watermarking protects ownership by embedding information directly into media, making the creator's rights clear and ensuring authenticity. It helps monitor distribution across platforms and trace unauthorised copies, making it vital for fighting intellectual property theft. A centralised or decentralised database should store all works and metadata for public verification. Automated systems, like web crawlers, can scan the internet for the work, verify proper attribution, and send alerts for potential violations. Community reporting tools can further help monitor misuse. To support creators, clear licence notices, template legal notices, and a legal fund should be provided. Regular audits are essential to ensure effective tracking and metadata embedding.

Establishment Of a Semi-Governmental Organisation

Apart from creating awareness, there should be a proper semi-governmental body to regulate and resolve issues regarding Free Art License. Semi-governmental organisations tend to

operate with more flexibility than fully governmental bodies, which allows them to adapt quickly to changes in the digital landscape. This agility makes it easier for them to implement new technologies for monitoring and enforcement efficiently. By partnering with private sector entities like tech companies and online platforms, they can develop and deploy advanced tools to track and prevent infringement more effectively. With a degree of autonomy and funding from both public and private sources, these bodies can make decisions swiftly, conduct educational campaigns, provide legal support to artists, and develop robust monitoring systems.

Such an organisation could educate the public, foster respect for intellectual property, and enforce clear, comprehensive policies. Jack Valenti, President and CEO, Motion Picture Assoc. of America¹ was concerned as to “*Who will invest the huge amounts of private risk capital in the production of films if this creative property cannot be protected from theft? In such a scenario, the ultimate loser will be the consumer.*” Such concerns led the United States Congress to enact the landmark *Digital Millennium Copyright Act (DMCA) of 1998*.² Establishing a similar legal framework in India could provide a foundation for taking action in cases of non-compliance.³

Equipped with advanced digital tools, they could monitor licensed art and take swift action against unauthorized use. By partnering with online platforms, this organization could help implement robust attribution mechanisms and infringement detection systems, ensuring that artists receive the credit they deserve and minimizing unauthorized use. On a broader scale, they could lobby for stronger intellectual property laws and better enforcement mechanisms at both national and international levels, creating a more powerful legal framework to safeguard artists’ rights.

Conclusion

Free art licenses, like those provided by Creative Commons, are crucial for fostering creativity, collaboration, and innovation in the digital age. These licences enable creators to share their work while balancing the protection of their rights with the promotion of open access to ideas. As the creative landscape evolves, free art licences will play a key role in shaping a more open and dynamic ecosystem. To raise awareness of free art licences, a combination of online and

¹ Jack Valenti, Testimony before the Senate Judiciary Committee, *MPAA*(Press, Apr. 3, 2001).

² Digital Millennium Copyright Act (DMCA), 1998.

³ MIT DSpace, *available at*: <https://dspace.mit.edu/bitstream/handle/1721.1/16818/50699080-MIT.pdf?sequence=2> (last visited Aug 5, 2024).

offline strategies is essential. Social media, instructional content, and influencer collaborations can broaden reach, while webinars, workshops, and educational materials distributed in public places can promote understanding. Partnerships with art institutions and collaborations with government agencies, NGOs, and other licensing programs can support broader adoption and policy integration. Achieving this will still not ensure non-ignorant users.

Thus, we suggest that to effectively protect digital content, digital watermarking combined with automated monitoring systems and well-maintained databases offers a strong framework for managing and safeguarding works. This technology ensures creators can control their content and prevent unauthorized use. However, tracking through digital watermarking raises privacy concerns and requires significant resources. As watermarking technology improves, so do the methods to circumvent it, necessitating continuous development of more resilient methods. Education is also critical; by raising awareness about digital watermarking and promoting respect for intellectual property, we can encourage responsible behaviour. However, education must be supported by a strong legal framework to ensure enforcement against violations. By integrating robust technological, legal, and educational strategies, we can better protect creators' rights and maintain the integrity of digital media.
