

COPYLEFT in Latinamerica(I): Introduction

FACTSHEET

IMPORTANT ISSUES



Artistic, literary, scientific works, computer software and database are automatically protected through copyright's "all rights reserved", for its sole creation.

Copyright grants the author a set of moral and economic rights. If third parties want to use the protected creation, express authorisations called licenses are required.

A type of licenses are the so-called COPYLEFT, among them, there are some well-known ones, such as Creative Commons or GNU.

1. What is COPYLEFT?

In a broad sense, COPYLEFT is a copyright licensing scheme in order to allow the free distribution of copies and modified versions of the works. These licenses require that the same rights be preserved in modified versions of the work.

This applies to softwares, artistic, literary, scientific works, or any creative work protected under Copyright.

Copyleft license does not prohibit the commercial use of works. This will depend on the type of license.

*COPYLEFT is only applied to Copyrights and not to
IPRs (inventions, trademarks...)*

The main objective of COPYLEFT licenses is to prevent the material bound by these licenses from falling by default under Copyright's "All rights reserved" (copyright ©) laws.

The term COPYLEFT was started to be used by free software communities, playing with the double sense of the word "left" in contrast with the word "Copyright", which is the traditional protection system.

COPYLEFT is often mistaken with the term open source software or free software. However, to be considered as free software, the following requirements must be met:



TIPS and WATCH-OUTS

COPYRIGHT licenses are agreements between the and users that must be made every time someone wants to use the work. COPYLEFT licenses authorise the users to use of the work without asking for permission every time he/she needs it, as these licenses operate by means of tacit acceptance or by a clicking in a digital environment.

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- Freedom 0: to run the program without any restrictions.
- Freedom 1: to study how the program works, and change it to make it do what you wish.
- Freedom 2: to distribute copies of the programme (redistribute)
- Freedom 3: to improve the program, and release your improvements to the public.

Usually, COPYLEFT licenses only allow some of these freedoms or allows them partially or subject to conditions, that is why, although they are similar, they are not the same, and do not produce the same legal effects.

TYPES OF LICENSES

There are an almost infinite number of licenses that are classified according to the rights granted. In general, licenses can be:

- Permissive open: (free) they usually gives users the freedom to use it in any way they see it fit, virtually without any restriction. The derivative works may not inherit the copyleft license. Examples of this type of licenses are MIT/X Window, Tcl/Tk, Apache and BSD licenses (Berkeley Software Distribution)
- Strong open (copyleft stricto sensu): They allow the use of the work, but impose restrictions to the derivative works such as the obligation to license under COPYLEFT any derivative works. Examples of this type of license are GNU GPL and LGPL (Lesser GPL).
- Closed (traditionals or copyright): They are known as restrictive licenses, since the author determines the rights of use, distribution, copy or any other provision he/she deems appropriate.
- Public Domain License: In this cases the author, publicly refuse to enforce or claim any of his/her rights, the effect is the same as if the work falls into Public Domain. These are the least strict because they grant the total freedom of the work. Such as the freedom to modify or charge a fee for the resulting work.

When talking about COPYLEFT in a narrow sense, it is referred as a set of strong open licenses applicable to different creative works bound by Copyright, which allows the author to determine which rights he/she wants to keep exclusively and which are open-licensed.

In particular, an open license is considered a COPYLEFT when, apart from granting permission for use, copy or redistribution, that includes a clause establishing the duty of granting a similar or compatible license for the copies or derivative works.

Each country has its own COPYRIGHT laws, although most of them are harmonized by International Treaties, in particular in Berne Convention. Latin American countries are such Convention Member States.

Hence, it is necessary to review the COPYLEFT situation in the market of your interest.

For further information concerning this issue, have a look to the Factsheet: [COPYLEFT In Latin America \(Ii\): Creative Industries](#).

*Any published work has “All rights reserved”,
unless otherwise specified.*

2. Connection between COPYLEFT and COPYRIGHT

	COPYRIGHT	COPYLEFT
ADVANTAGES	<ul style="list-style-type: none"> Control: The author preserves all his/her rights. Profitability: Allows traditional ways of monetization, such as transmission o closed licenses. Liability: it is possible to identify who is behind each work (i.e liability due to the malfunctioning of a software program). 	<ul style="list-style-type: none"> Flexibility: the author chooses what rights is going to share and the conditions of such sharing. Innovation: Boost works and information sharing. Development: All derivatives works should be shared under the same or compatible terms. Agility: The license is granted ex-ante, subject to the use of the work is according to the terms of the COPYLEFT license.
ADVANTAGES DISSAVANTAGES	<ul style="list-style-type: none"> Slower and more expensive: It is necessary to obtain an individual license from the author, what is usually time consuming. Inefficient: Some works remain unexploded due to the inactivity of the author. 	<ul style="list-style-type: none"> Confusing: The existence of different versions of the same work could be confusing for users. Lack of control: The author is not able to control who, where or how his work is being used.

In any case, Copyright and COPYLEFT are not incompatible but complementary, for example, it is possible that a rightholder grants a COPYLEFT license for all the non-commercial uses of his/her work, and grants Copyright closed licenses for its commercial exploitation.

COPYLEFT licensing system is complementary to COPYRIGHT that operates automatically granting moral right to be recognized as the author of a work) and economics rights (reproduction, exploitation, distribution and transformation). The paternity of a work is an unwaiverable right, whereas economic rights may be subject to COPYLEFT under "some rights reserved". Copyrights is regulated by Berne Convention, which have global scope. It automatically protects creative works against plagiarism and unauthorised use from the moment of its creation. Latin American countries are part of [Berne Convention](#).

The author does not have to file any registration form in order to obtain the right to claim the protection of his/her work. Moreover, thanks to the contractual freedom, he/she can grant any kind of licenses, including COPYLEFT's.

The COPYLEFT licensing system offers authors and creative industry companies the opportunity to release their work by choosing an open free license that allows its use, copy, change and redistribution and, at the same time, ensures the preservation of these freedoms for any recipient of copy or a derivative work.



TIPS and WATCH-OUTS

Copyleft is not intended to abolish copyrights, nor to make its authors waive their rights, but to allow use of the work, provided that such uses is subject to the terms of the COPYLEFT license without the need of a case-by-case authorization.



TIPS and WATCH-OUTS

The application of a license does not have any connection with acquiring copyrights for a creative works nor with the proof or the authorship registered protection, because the copyright is automatically obtained merely for its creation.

Licenses are applied once the work has been created by the author in order to regulate the rights that legislation grants him/her automatically.

3. Is COPYLEFT private or public?

COPYLEFT licenses are authorizations that the authors and IPR holders grant to third parties in order to use and distribute the protected material under national copyright laws. These are private initiatives, generally conducted by non-governmental organisations (NGOs), which complement to the national system by providing licensing standards and certifying their use. They are not compulsory, and the underlying principle is freedom of choice and contract, and there could be as many licenses as they may want to grant.

Argentina, Brazil, Chile, Paraguay, Uruguay and Venezuela do not prohibit these licenses moreover, they encourage its use within their public administrations



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If something has been published on the Internet, it does not mean that is Public Domain, nor that it can be used without the author's authorisation (including texts, images, and/or photographs or even the web design). COPYLEFT licenses are a form of previous authorisation. Review the Terms and Conditions (both of the image and of the webpage) to ascertain if any COPYLEFT is applied to such images.

4. Main types of COPYLEFT licenses

COPYLEFT licenses render unnecessary an authorization through contractual license every time anyone wants to use the content. It is only necessary that anyone who wants to use, copy or modify the content bound by COPYLEFT comply with the terms established by its author therein. Example: The COPYLEFT license of an article published on the Internet, the author of which allows its copy and distribution, but not its commercial use:

- Anyone who copies or distributes the content will be automatically considered as licensee and bound by the COPYLEFT license terms.
- Those that make a commercial use of the work are excluded from the scope of the license, and will be considered offenders, thus, they may be sued.

In other words, the COPYLEFT reverses the legal presumption of non-authorisation of copy or distribution over one that explicitly grants certain rights to the users under certain conditions. Although at the beginning COPYLEFT was intended for software, nowadays we can find COPYLEFT licenses in art, music, audiovisual creations, food or scientific research sector. Open licenses may be permissive (they do not impose any particular restriction over a second redistribution) and strong (they impose particular restrictions over a second redistribution, and they are also known as COPYLEFT). Both are regarded as free licenses, but they entail different consequences.



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Although there are a great number of types of COPYLEFT license, some of them have become "standards" because of its popularity and widespread use. This makes it easier for SMEs to understand and implement these licenses.

There are several types of COPYLEFT licenses that are promoted by private organizations, such as:

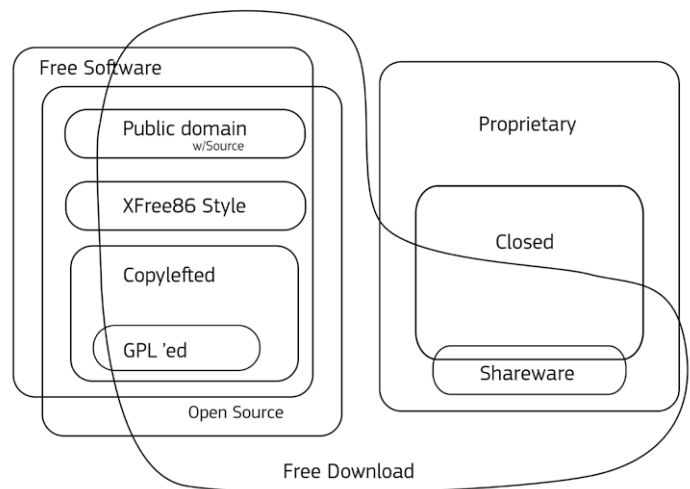
- **Copyleft Foundation:** A nonprofit organization with assets intended for promoting the COPYLEFT culture and the use of GPL, Creative Commons, Colorius licenses, Free Art License (Licencia Arte Libre) and Unconditional Air License (Licencia Aire Incondicional)
- **Free Software Foundation:** (FSF): It is a nonprofit organization funded by Richard Stallman that is intended to promote open source softwares. It develops, maintains and defends the GNU license GPL (GNU General Public License). Their core aim is focused on the protection of the free distribution, change and use of software programs. The software covered by this license is free software and is protected against attempts of appropriation restricting users' freedoms. The GNU General Public License (GNU GPL) is a set of particular distribution clauses in order to publish programs under copyleft, which may be distributed for free or for a price. The distribution rights granted by the GPL for modified versions of the work are subject to conditions. When someone distributes under GPL license a work and the changes made by his/her own, the requirements for the total distribution of the said work cannot have major requirements than the ones covered in the GPL license. This requirement is known as COPYLEFT.
- **Open Source Initiative:** This is an organisation that works for promoting open source codes. Certifies Open Source licenses. Open Source software allows users to study and change the source code in order to create derivative works. Some open source software is available against a fee, but most of it is available completely free of charge.
- FOSS stands for Free software and open source software, which share similar development methods, but also have differences regarding ideological aspects. Free software is focused on the freedoms granted to users, whereas open source software is focused on the advantages of its development method. "FOSS" is an impartial term between both ideologies.



TIPS and WATCH-OUTS

Free software refers to freedom and not to price. In order to avoid confusion, when a software company says that their product is free software, it is advisable to always check the distribution terms to see whether users are having all the freedoms implied by the term free software. Sometimes, the software is actually free, but sometimes it is not.

Examples of Free Software and Open Source:



- Linux: under license GNU/LINUX (better known as Linux)) is an operating system for computers , compatible with Unix. It differs from the rest of the system in the market because is free and it always goes with its source code. The system is composed of the core system (kernel) and a great number of programs and libraries that makes it possible to operate. Linux is distributed under General Public License (GPL), thus, its source code is always accessible.
- Firefox: internet browser coordinated by Mozilla Corporation and Mozilla Foundation .



- Thunderbird: e-mail manager from Mozilla Foundation.
- OpenOffice: office software package developed by Apache Software Foundation.
- Budapest Open Access Initiative: Organisation whose aim is to accelerate at international level the open access to research articles of all academic fields. Its Open Access license is focused on articles published in scientific magazines with expert reviews and congress papers. The documents are donations from authors written exclusively in order to be better known, expand the audience and obtain greater use and impact of the publication, and not to obtain revenue nor percentages on sales. The objective is to remove barriers to the exchange of knowledge.
- Internet free-access publications are divided in different categories:
- Non-free open access publications: A payment for the benefit of the author is required. The money usually comes from the author's research grant or from the people he/she works for. In the case of economic difficulties, many magazines waives the total or partial amount of the fee (in general, it happens with authors coming from a developing country).
- Free open access publications: They use a variety of business models. Some free open access publications are directly or indirectly subsidied by bodies such as universities, laboratories, research centers, libraries, hospitals, museums, learned societies, and government foundations or agencies. Some of them are funded by a section separated from free publications. Others are funded by advertising, volunteering, additional services, membership fees, donations, reprinting, or print or premium editions. And others, of course, use a combinations of these means.
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The use of these licenses are free and have international legal guarantees in countries on which these licenses have been established.

Graphically, Creative Commons describes gradually the copyright terms granted by each symbol, starting from "All rights reserved" of the creative work (feature of the traditional idea of copyright) to "No rights reserved" (feature of an idea of public domain or a kind of no copyright).



It's not just a license,
It's a lifestyle!

5. Related links and further information

Further information about IPR in Latin America can be found on the Latin America IPR SME Helpdesk website:

www.latinamerica-ipr-helpdesk.eu/

Creative Commons: www.creativecommons.org

Copyleft Foundation: www.fundacioncopyleft.org

6. Glossary

Open code/ Open source: Open code software means that it is distributed under a license that allows its use, change and redistribution. The core requirement to be considered to fall in this category is that its source code is available. It allows studying how the program works and modifying it in order to improve or adapt it to a specific purpose.

Closed code/ Closed source: this means that the computer program code is hidden, i.e. it cannot be access to be modified. In general, an escrow agreement is performed so that it is available for the client.

FOSS: acronym that stands for free and open source software, in English. A free and open source software is a software that is bound by a license that allows users to study, change and improve its design through the availability of its source code.

GNU: is a recursive acronym for "GNU's Not Unix". The GNU project was started by Richard Stallman and aiming at developing an operating system totally free: the GNU system.

Open Innovation: innovation strategy in which companies cross their internal organizational boundaries and cooperate with external professionals to carry forward their projects and do R&D.

License: is an authorisation granted by means of an agreement.

General Public License - GNU GPL: is a set of particular distribution clauses in order to publish programmes under copyleft. The GNU Project uses these licenses on most of the programmes they distribute.

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www.latinamerica-ipr-helpdesk.eu

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Newsletter: Keep track of the latest news on IP in Latin America relevant to your business.

Multi-lingual Webportal: Browse our multilingual web portal for a broad range of information and training materials on IPR in Latin America in English, Spanish, Portuguese, French and German.

Training: Attend our trainings (online and on-site) and learn more about the key aspects of IPR protection and enforcement issues for doing business in Latin America.

For more information please contact the Helpdesk:
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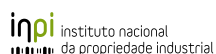
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