# CopyFair License

From P2P Foundation

**= a type of licensing or agreement that aims to re-introduce the principle and practice of reciprocity in markets that use mutualized knowledge (commons), by regulating contributions to these commons for those that commercialize it**

## Contents

## Description

Michel Bauwens:

"The Copyfair is a principle which aims to re-introduce reciprocity requirements in market activities

- it aims to preserve the right of sharing knowledge without conditions

- but aims to subject commercialization of any such knowledge commons to some form of contribution to that commons.

So the aim is to create 'ethical' entrepreneurial coalitions, consisting in preference in 'generative' entities such as cooperatives, solidarity economy entities, social entrepreneurship or any not-for-profit mission-oriented or purpose driven entity, which constitutes itself around a knowledge commons (mutualization of productive knowledge), and contribute to this commons to which they are all co-dependent."

## FAQ

Draft version:

The FAQ

### Why is licensing so important?

Today, more and more individuals and communities, locally and globally, are involved in the creation of shared resources, i.e. commons. Yet most of the time, the possible 'exchange value' that can be created by such commons, still the main mode of creating livelihoods in our political economy, is extracted by private companies. It is very hard to create a sustainable and fair livelihood outside of working as labor for companies or as freelancers in the market.

Paradoxically, this situation is facilitated by the existing open licenses, which allow anyone to use the commons (we have no objection to that), but also to profit from the commons without specific required reciprocity. This is the challenge that the copyfair license addresses: can communities and their commons keep the freedoms of usage fully protected, but set a condition on profit-making that requires stronger reciprocity. In this context, we have elsewhere proposed the creation of 'Open Cooperatives', i.e. we recommend commoners to create their own cooperatives, but coops that are specifically engaged and oblige themselves statutorily (in their own statutes) to co-create commons.

This license, by requiring reciprocity, such as for example a license usage payment for firms who do not contribute to the commons, creates what Dmytri Kleiner has called an Exvestment strategy (http://p2pfoundation.net/Exvestment) i.e. a method to "channel value out of capitalist circulation into alternative communal organizations and keep the bulk of it circulating there". In our vision, open cooperatives using the CopyFair licenses, and accompanied by appropriate statutes and 'value charters' (social charters expresses common values that guide the production and the community), can then create livelihoods for the commoners who co-create commons. Through this license, 'commons-oriented peer production' can create the conditions of its own self-reproduction, without having to resort to private shareholding capital. Our goal is to weaken the 'value captation' strategies of what we call 'netarchical capitalism', and to stimulate the value creation of the ethical entrepreneurial coalitions which co-produce the shared resources and are owned by the commoners (i.e. commons producers) themselves.

### What is the CopyFair License?

The CopyFair license is the name we give for a new type of license based on stronger reciprocity.

The existing mainstream open license that creates a commons, the General Public License, is based on a 'general reciprocity' model. Each person has the right to use the code, but any changes to it must be given back to the code base so that other people can continue to use it and the commons can continue to grow. The code base can also be used by persons and companies that do not contribute to the commons, i.e. without such reciprocity. In a license with a strong reciprocity requirement, this is strengthened in the following way: anybody can use the code base of the license, but persons or companies that want to make profit without making any contributions, need to make another contribution to the common effort, for example by paying for the license.

The CopyFair license does not restrict any usage of the code base and maintains the rights and freedoms enshrined in the GPL-type commons licenses, but it restricts profit-making on the basis of common work without any contribution.

### Why is it needed ? What it is for?

The dominant free software licenses allow any person and company to use the code base, without asking for any specific reciprocity. This allows huge multinational companies that do not necessarily contribute to the commons, to use this commons for profit-making. This may not be seen as a major problem in software production itself, where the barriers to entry and participation are low, and the companies may be seen to contribute to the network effect by enlarging the user base. However, in the case of for example design, which is to be used in physical manufacturing, this means that investments are needed in workplaces, machinery, and wages, such a for-profit usage may be seen as extractive by the players who do invest in such production facilities. In practice we see that most of the open source economies are indeed dominated by for-profit entities, which may or may not contribute to the commons. Another example would be a traditional indigenous community involved in medicinal herbs. With a traditional open license, it may retain the knowledge created by their commons, but certainly the economic activities will still be taken on by firms who do not necessarily practice profit or benefit-sharing.

So the essential issue addressed by the CopyFair license is to insure fair conditions of value creation and distribution. The commoners / contributors who are contributing, investing in commons-based peer production can insure that the value of the common work is not extracted without any reciprocity.

### How does it relate to other licenses?

The CopyFair license endorses and maintains the free software freedoms enshrined in the GPL, but restricts profit-making potential by a reciprocity requirement.

Unlike the Creative Commons Non-Commercial license, the CopyFair does not restrict the creation of an economy around these commons.

Unlike the Copysol (= solidarity) license developed by Solidarius, the Copyfair license does not restrict usage by for-profit entities, but only requires a reciprocal contribution.

Copyfair extends the user base of the Peer Production License, the first example of a reciprocity-based license, by not restricting usage to worker coops, but extending it to other forms of the ethical economy which are willing to reciprocate with the commons and their communities.. It forces entities who do not directly reciprocate, to reciprocate in other ways that are acceptable to the commoners and their facilitating organisations.

The Fairshares Association uses a similar philosophy using two different Creative Commons licenses: BY-NC-ND conditions for non-members and BY-SA for members (see http://shura.shu.ac.uk/10198/1/TheCaseForFairSharesV1.2-SHU.pdf). Anyone can share it non-commercial, but members can both share it commercially and make derivatives so long as they share alike.

### Who is it for?

The license is aimed to all commoners, i.e. citizens who co-produce and maintain commons as 'peer producers', and to all who attempt to create their own livelihoods around this commons-based peer production. It is open for all outside agents who are willing to reciprocate with commons construction.

### How can it be enforced?

Licenses are contracts that can be enforced by the courts. The CopyFair license builds on the legal force that has been achieved by already existing open licenses such as the GPL and Creative Commons. We propose that the agent in charge of enforcement is the for-benefit association (also called FLOSS Foundations), that generally maintains the cooperation and the infrastructure of cooperation for a particular commons. These democratically managed entities are responsible for the defense of the commons and the defense of its license as the chosen social contract between commoners.

### Does it restrict freedoms guaranteed by other licenses?

The CopyFair license fully protects the four freedoms of the copyleft tradition. However, it restricts the profit-making capacity to those that reciprocate in the co-construction of said commons.

### What are the potential benefits?

The first effect of the CopyFair license may be to create a certain income for the particular commons, probably through the for-benefit associations. The second effect is cultural, by requiring a reciprocity that needs to be defined, and defended, it strengthens the community dynamics and effectively re-integrates reciprocity values into the marketplace. If we define capitalism as a system which attempts to externalize such requirements, then the CopyFair license can be seen as a creation (or return to), 'moral economies', i.e. markets that integrate externalities in their own functioning. It's main direct benefit is the creation of a ethical entrepreneurial coalition around the commons, and the creation of livelihoods in self-owned entities.

### What are the potential drawbacks?

Requiring reciprocity may discourage the commercial uptake of the product or service associated with the particular commons that is protected.

### How can reciprocity be defined?

Reciprocity is not a 'hard' concept, but is contextual to the commons and its community. This is NOT a drawback but rather the aim of the license, i.e. to create a dialogue around reciprocity, and socially accepted rules and norms.

### What kind of entities can use the Copyfair commons?

The CopyFair license is open to all who contribute and use a particular commons.

### What kind of entities cannot use the Copyfair commons?

The CopyFair license is closed to entities that aim to make a profit without contributing to the commons. However, it does not restrict their usage rights, only their profit-making rights, which they can restore through an agreed form of reciprocity.

## Status

**the license as proposed above may not exist yet, but the closest implementation is the modality used by the FairShares Association, see below**

### Copyfair license under construction for the Fabrique de Mobilite in France

- see: "Communs/Les licences à utiliser pour protéger les communs"

URL = http://wiki.lafabriquedesmobilites.fr/wiki/Communs/Les_licences_%C3%A0_utiliser_pour_prot%C3%A9ger_les_communs#Cr.C3.A9ation_d.27une_licence_Fabrique_des_Mobilit.C3.A9s

### A reciprocity license for software

- Reciprocity Licence for software = Fair Source Licence https://fair.io/

### Semeoz.info license (france) very close to what we want

Lionel Maurel writes:

"Une déclinaison assez intéressante du concept initial de Dmytri Kleiner : http://semeoz.info/credits/

La condition d'utilisation commerciale sous condition de réciprocité est en effet mieux détaillée et combine des formes de réciprocité directe et indirecte :

- Utilisation Commerciale sous conditions — Vous n'êtes pas autorisé à faire un usage commercial de cette œuvre, tout ou partie du matériel la composant, sauf si :

Vous avez vous-même contribué au bien commun que constitue le site Semeoz.info ou

Vous êtes une entité marchande éthique (coopérative, entreprise sociale,…) ET que l'ensemble des gains financiers générés par l'utilisation des œuvres est entièrement reversé à vos salariés ou contributeurs.

ou

Vous ne répondez pas à ces critères, mais vous versez à l'association une redevance contributive. (contactez-nous pour que nous convenions ensemble du montant de cette redevance)

Par ailleurs, le site utilise un logo inspiré des Creative Commons, qui représente graphiquement la condition de réciprocité."

Il ne manquerait vraiment plus grand chose pour pousser la démarche jusqu'au bout. En fait, il suffirait d'exprimer ces conditions dans le contrat juridique (pas très compliqué) et de transformer cette page en un "Commons Deed", comme en ont les licences CC : https://creativecommons.org/licenses/by/3.0/

En faisant ça, on mettrait en place une version générique de la Peer Production Licence qui deviendrait beaucoup plus facilement réutilisable." (reciprocite mailing list, February 2016)


### People's Ethical Appropriation Reciprocity License

Proposed, used by the Anyshare project: https://github.com/anyshare/PEARL text (https://github.com/anyshare/PEARL/blob/master/License.txt)


### Reciprocity licenses

- Source: http://wiki.lafabriquedesmobilites.fr/wiki/Communs/Les_licences_%C3%A0_utiliser_pour_prot%C3%A9ger_les_communs#Cr.C3.A9ation_d.27une_licence_Fabrique_des_Mobilit.C3.A9s

Reciprocity licenses (Contributive Commons, Peer Production License, Commons Reciprocity License (https://scinfolex.com/2014/07/08/coupler-une-licence-libre-et-une-crypto-monnaie-la-proposition-de-la-commons-reciprocity-licence/)) are developing. These new licences - which for the time being remain only in the form of prototypes - allow the commercial use of a resource by an entity only to the extent that it "contributes" back to the commons.

Organizations already have models of reciprocity in place. As Silvère Mercier explains in this article (http://www.bibliobsession.net/2016/03/30/de-linteret-de-faire-metadonnees-culturelles-communs-de-connaissance/), the "common" MusicBrainz is backed by a foundation called MetaBrainz (https://metabrainz.org/), which is there to regulate the commercial uses of this base. Entities wishing to trade on the basis of this data are encouraged to register with the foundation that contracts with them (see list here (https://metabrainz.org/supporters/account-type)). Everyone can use MusicBrainz's data, but the "community" can go to the commercial actors who make use of it to encourage them to support MusicBrainz.

"There are also organizations that make use of our data that have explicitly declined to support us. There may also be other organizations making use of our data that we don't know about yet. If you know of a company using our data, please contact us."

If they don't support, well too bad, they won't be in the list put forward on the site (https://metabrainz.org/supporters), but that doesn't prevent them from commercial use. This is what Metabrainz has done that could be proposed for many other commons. See also this example on the Unisson website (http://unisson.co/usage-commercial-dunisson/) (in French)

- Stripey writes that "The Commons Management Agreement is a special form of CLA (Contributor License Agreement) that can be used by free code software projects like CryptPad who are using a copyleft license (eg GNU AGPL). It specifies that the license of the full version of the project's software will always remain free and copyleft, but that proprietary licenses may be issued for a fee, allowing comanies to use the software in a commercial setting without honouring the copyleft obligation. This is seen as a way of creating sustainable funding for projects developing software for the commons, and as such, has similar underlying goals to the Peer Production License." (Loomio, April 2018)

Example at https://www.clahub.com/agreements/cjdelisle/cryptpad?

# Discussion

### The difficulties in implementing Copyfair principles in industrial design

"Copyfair is based on copyright, a natural right which does behave (mostly) the same around the world in most territories. Copyright will cover a specific embodiment eg, a drawing or a text (which then extends to code as text). Patents however are very different animals being state gifted monopolies that recognise a principal of operation. These two important aspects of patents; the territory based awarding by a state or supra-state body; and the claims of inventive steps or principals means that copyfair or gpl etc are not appropriate.

Whilst you can open source such a project which would be typically called I believe "defensive publication" this counts as prior art preventing a patent by another commercial operation. However another commercial body can make the next step in the development and patent that which blocks the community making use of that development, if that next step is critical it can kill off the OS project and effectively be an enclosure of the commons.

However having an open source project does not allow you to enforce any sense of reciprocity as in copyfair or PPL/CBRL as you cannot force any profit maximising company to recognize your ownership of the invention. The only recognition of your invention and its key principals being a patent.

As I say I would love to develop in an open source way the technology I am considering, but I cannot square this circle, I need to get a patent to establish a "property" which I could then consider licensing at a lower fee to say non-profits in a way that reflects the goals of the CBRL. The core technology could then be a basis for a community platform around which developments and applications could grow. " (email, November 2016)

### Applying Copyfair principles to software

#### 1. Lionel Maurel:

"It is not recommended to use a Creative Commons Licence for software. Some important elements are lacking in the CC. For example, there is nothing about the distribution of the source code, a crucial element for software.

It is not impossible to use the Peer Production Licence for a software, because software is grounded on copyright, but it can be source of difficulties in the application.

PPL can't also work for Hardware and the problem is worst than with software, because CC licences dont' apply to industrial property (like patents). So the licence will be totaly inefficient if applied on Hardware. And that's a big problem because a lot of people interested in rciprocity licences are dealing with Hardware.

So if you want to build a "PPL-like Licence", but suitable for software, you can take the AGPL or the MIT Licence as a basis, and just ad the particular clause on commercial use that Kleiner added to the CC-BY-NC-SA licence.

I think the AGPL will be better to start with, because it has a Share Alike effect, like the CC-BY-NC-SA used by kleiner as a model for the PPL. The MIT licence has not." (email, January 2017)

#### 2. Dmytri Kleiner:

"The PPL is explicitly not recommended for software by it's authors. Here's a quote by Dmytri:

This is why I think we need to be careful when we apply the PPL (or similar) to software, because I think to maximize transvestment [the transfer of value from one mode of production to another] in the direction of commons-based production we need to keep Department I goods (Capital Goods or Producers' Goods) free for capitalists so they can exvest in them, while keeping Department II (Consumer goods or commodities) goods non-free for them." (email, January 2017)

# In French

### les points à élucider dans une license

In French, by Antoine C.

"les points à élucider pourraient-être ceux-ci :

1. **contribué au bien commun**: si je participe juste en mettant une virgule, alors je ne paie rien? Il doit y avoir moyen de définir le minimum de contribution suffisant et à l'évidence …
2. **entité marchande éthique**: pas facile à déterminer, c'est toujours un vaste débat, et le seul estampillage coopérative, ESS, etc … ne suffit pas à qualifier la dimension éthique. Certaines sociétés capitalistes sans exigence de ROI ni dividendes ni décision collective, pourraient en faire partie.
3. **gains financiers générés**: il faudrait cerner plus précisément ce dont il s'agit (en terme comptable IFRS pour une lecture internationalisée ???).
4. **Quid de l'entité non-marchande qui bénéficie de ressources supplémentaires rapportées grâce au / ou en utilisant le Bien-Commun réalisé?** (exemple: une asso qui se fabrique une voiture fonctionnant à l'hydrogène dont les informations sources auraient été mises à disposition par des tiers sous cette licence, et qui obtiendrait une subvention de 1.000.000€ du ministère de la culture pour y arriver ???)
5. **contactez-nous pour que nous convenions ensemble du montant de cette redevance**: cette possibilité du "au cas par cas" est plutôt sympas. Cependant, nous pourrions nous demander s'il ne serait pas possible de donner une indication de base de mode de valorisation." (reciprocite mailing list, February 2016)

### Pas si simple

By Maïa Dereva, Semeoz.info

en retravaillant sur les visuels, je me rends compte que les choses ne sont pas aussi simples qu'elles en avaient l'air pour moi quand j'ai innocemment créé ma "licence maison" pour Semeoz.info en août 2015.

Autant il est probablement aisé au niveau juridique international de mettre en place une redevance contributive (les deux parties se mettent en contact d'une manière ou d'une autre, et se mettent d'accord sur le montant de cette redevance), autant il l'est beaucoup moins de définir ce qu'est une entité "éthique"… en encore moins d'aller vérifier à l'intérieur d'une entreprise la bonne observance de critères définis depuis l'extérieur… De mon point de vue, de telles pratiques auraient en outre un côté intrusif qui ne me semble pas très compatible avec le pair à pair…

Et même concernant la licence que j'ai "inventée" sur Semeoz en mélangeant 3 critères : comment fixe-t-on le seuil pour décider si quelqu'un est contributeur ou non ? Imaginons que quelqu'un écrive un seul article dans le blog, et après il a le droit de tout utiliser commercialement ? Ce ne serait pas très "fair"… :)

Bref, pour le moment, si cette licence Copyfair vise une utilisation aussi simple, virale et internationale que la Creative Common, il me semble que seule sa version "commerciale avec réciprocité" est viable. Elle laisse ainsi toute latitude de fixer le montant de la redevance (et même d'estimer son montant à zéro en fonction de la confiance subjective accordée à la structure partenaire).

J'ai regardé la license V0 ici : http://fosslawyers.org/the-fair-commons-generic-license-v0/ Personnellement il me paraît illusoire de vouloir créer autant de variantes que de cas de figure… Outre le fait qu'on sera encore en train de définir les variantes dans plusieurs années, cela brouillerait la lecture de la licence donc pénaliserait sa viralité. Et en ce qui concerne la question de la protection durant les 50 années suivant le décès de l'auteur… le plus simple me paraît de limiter l'utilisation commerciale de son vivant.

Ça donnerait une licence utilisable tout de suite et claire. Et on verrait si elle doit donner naissance à des variantes ensuite…

# More Information

- Copyfair
- Peer Production License
- Fair Commons Generic License
- FairlyShare

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