

# Collaborative research: about licensing, waiving, and ownership

Egon Willighagen<sup>1</sup>

<sup>1</sup> Maastricht University

Corresponding author:

Egon Willighagen<sup>1</sup>

Email address: [egon.willighagen@maastrichtuniversity.nl](mailto:egon.willighagen@maastrichtuniversity.nl)

## ABSTRACT

Research collaborations are hampered by copyright law. While these laws are aimed at solving sustainability of writing and later other creative processes, and nowadays knowledge too, they make it harder in a time where research is funded with on temporary projects. This article discusses some of the aspects involved, though the legal foundations are only minimally brought up. One critical aspect is the role of consortium agreements. It also outlines how open licenses can simplify international research, particularly when multiple research projects are involved and when projects have ended.

## OWNERSHIP

Ownership of source code and data is different from creative writings, but there are a significant number of parallels. One of that is that they all have the concept of ownership, which normally resides with the creator. Along with this ownership comes the right to make copies exclusively, the copyright law. An excellent introduction into this is the book *Free Culture* from Harvard University law professor Lessig Lessig (2004).

This copyright, in Europe, applies to software and data collections too. Not to facts and not to algorithms. The differences are subtle. Databases are collections and have copyright, but individual items in the database are facts and do not have copyright. That means that manually retyping the content of a database is perfectly legal in most European countries, but doing the same in an automated way (e.g. with software) is not. Likewise, for software. An algorithm describes what needs to be done to solve something, and is that close to mathematics that it is generally considered facts. However, software implement algorithms which involves a creative act, and therefore falls under copyright law.

## BUILDING COMMUNITIES

Ownership, in the legal sense, is bound to a legal entity. A person or a legal organization (e.g. a university). That is a foundation of the law, which means that two people or two organizations want to jointly work on the same creative product, they will have to overcome this. Not unlike how the law organizes that several people can be owner of a company: this is done by means of contracts.

However, contracts are expensive. Really expensive. Moreover, contracts are very often different for each situation, whether really needed or not, practically they often are. Templates are often provided, nevertheless, by legal advisers.

To minimize the cost of these legal agreements the Open Source community came up with the idea to create licenses, just like the licenses you buy for commercial products Open Source Initiative (2017a). The content of the license, however, is quite different, but the legal mechanism is the same. The license gives you rights. In the case of Open licenses, three rights that matter. The three rights that ensure that time you invest of the licensed product is not lost. The Open license allows you to use the product now, but also in the future, and the license cannot be withdrawn (in normal situations). To ensure this, three rights have shown central here: 1. the right to use and reuse the software; 2. the right to modify the software; 3. the right to redistribute the software Open Source Initiative (2017b); Open Knowledge International (2017).

I will not go into details why these rights matter, but the bottom line is that they secure your return-on-investment and very efficiently organize collaborative efforts. To see how well that works, realize that Android phones would not exist today, and that the vast majority of the websites run cheaply because of Open Source licensing.

## CONSORTIUM AGREEMENTS

For many European Commission-funded projects, the consortium agreement implements the idea of the license. It ensures that all partners have access to frontmatter and to a pre-selected list of backmatter, to enable to collaboration within the project. However, many templates used for such agreements take a different approach for the licensing. Rather than ensure the three rights, they frequently distribute the ownership. That works perfectly well until the end of the project: during the project there is an entity, the project, which may be a legal entity or not, but at least have some status, as it at least implements a factual and mutual interest among partners as they depend on each other to get the final sum of funding.

However, after the end of the project, the consortium agreement ends, and the individual partners are on their own again. Legally and financially, which each come with their own responsibilities, some legally defined, often linked to intellectual property.

Now, if the consortium agreement made all partners owner of the copyright, each reuse must be approved by all partners, by all financial and legal departments. That is expensive. Very expensive.

Reuse means here: every single follow up project. But this issue even applies while the project is still running, which is why there is even more legal agreements needed when two separately funded projects want to work together.

## THE OPEN SOLUTION

What Europe would greatly benefit from is consortium agreements that move away from the solution that required joint ownership to a solution where the rights differently. Open Licenses allow that.

First, copyright remains with the individual legal entities (persons or organizations) and does not require special legal tools. The only important aspect is to record this well, but that has been common practice for decades. Commonly, many legal entities will own many small parts of projects. For example, the Linux kernel (the foundation of the Android system), is owned by thousands of developers and hundreds of companies, including Microsoft and Red Hat, two of the 500 biggest USA companies. This collaborative development is nicely described in Raymond's Cathedral and the Bazaar from 2001 Raymond (2001).

Second, the rights given to all partners, forming the foundation of the collaboration are done with the license.

Now, this license is general. It commonly is provided for free, but that is not a requirement. There are sustainable business models that require payment for Open Source licenses, like with the SUSE Linux distribution. Importantly, the Open Source license does not need signatures. When you use the license, you automatically legally approve and are bound to the license. Some licenses even organize that the license is unbound automatically when you violate the license.

Moreover, because the license is general and requires no signature, it is not applicable to a subset of legal entities. That means, the Open license also automatically applies to any collaboration and does not distinguish between them. That means that if two funded projects want to work together, the Open license covers that immediately and no new agreements need to be set up. That further significantly reduces the financial burden of the operation.

Finally, Open licenses are not time-limited. They are indefinite. And that reduces the cost of and simplifies the complexity of exit strategies and defines in sufficient detail what happens after collaborations end. In fact, because the license is to anyone who wants to use the license, any legal entity can support the sustainability, which is exactly what practically happens for solutions that have proven their value.

## PUBLIC DOMAIN DATA

A final concept to cover is the public domain. This concept is reserved for things that no longer fall under copyright, which happens 70 years after the death of the creators (or something like that), and for things which do not have copyright at all. The public domain is a common concept in the USA, where

all governmental output (like from the NIH, EPA, etc) is expected to be available in the public domain. European jurisdictions do not always have this, and both writings and data often automatically fall under copyright law.

In practice, however, things can be more complicated. Frequently, NIH, EPA, and other governmental projects release data of mixed original, mixing public domain and copyrighted data, making reuse hard, as you need to figure out first what is what.

To overcome the issues with differences around the ideas of the public domain in various jurisdictions and to make it simpler to provide provenance as to what the rights of the data are, two mechanisms have been introduced recently.

The first is the Public Domain Mark. This mark can be used to reflect that data is part of the public domain (free from restrictions by copyright law) Creative Commons (2017b).

The second is waivers. The most prominent example here is the CCZero waiver Creative Commons (2017a), created by the Creative Commons Foundation, known for their gold Open Access licenses. But the CCZero is not a license; it uses a different legal mechanism. With licenses the creators keep the copyright, and the creators give the users the rights they need to use the product. With waivers, the rightful owners waive their ownership and the copyright that comes with that. It has the same effect as if the product was in the public domain.

## ACKNOWLEDGMENTS

Much of my experience emanates from the Open Source community. I am deeply indebted particularly to the Debian project with their very educational legal mailing list.

## REFERENCES

- Creative Commons (2017a). Cc0. <https://creativecommons.org/choose/zero/>.
- Creative Commons (2017b). Public Domain Mark 1.0. <https://creativecommons.org/publicdomain/mark/1.0/>.
- Lessig, L. (2004). *Free culture : how big media uses technology and the law to lock down culture and control creativity*. Penguin Press.
- Open Knowledge International (2017). What is Open Data? <http://opendatahandbook.org/guide/en/what-is-open-data/>.
- Open Source Initiative (2017a). Licenses & standards. <https://opensource.org/licenses>.
- Open Source Initiative (2017b). The Open Source Definition. <https://opensource.org/osd>.
- Raymond, E. (2001). The Cathedral and the Bazaar: musings on Linux and open source by an accidental revolutionary.