

Copyright And Digital Rights Management: Creator To Consumer In A Digital Age

Learning element 3.1

Software And The Intellectual Commons:

*What do we mean by the 'commons' and
how have some software developers attempted
to keep their work within it?*



Bill Cope, Tom Davis and Mary Kalantzis

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www.C-2-CCourse.com

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This Learning Element is published at RMIT University

First Published in Australia in 2003
by the Faculty of Education, Language
and Community Services
PO Box 71
RMIT University
Bundoora VIC 3083

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[Cataloguing-in-Publication and ISBN data]

Cover image: <http://www.robpetherick.co.uk/Places/images/places4.jpg>

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Framework map

Copyright And Digital Rights Management

	<i>Empirical And Experiential</i>	<i>Conceptual And Critical</i>	<i>Applied And Transferred</i>
Theme 1: Copyright & Intellectual Property	<p>1.1</p> <p>Existing Copyright Rules</p> <p><i>How has copyright traditionally been determined?</i></p>	<p>1.2</p> <p>Freedom v Protection</p> <p><i>What is the best way to encourage innovation?</i></p>	<p>1.3</p> <p>Copyright & The Publishing Industry</p> <p><i>How does the publishing industry deal with copyright issues?</i></p>
Theme 2: Digital Rights Management	<p>2.1</p> <p>Digital Rights Management (DRM) Systems & the Law</p> <p><i>How do DRM systems work and how has copyright law responded?</i></p>	<p>2.2</p> <p>DRM & Freedom</p> <p><i>How has technology change altered the freedom v protection debate?</i></p>	<p>2.3</p> <p>Industry Responsibilities Under DRM</p> <p><i>What copyright issues do businesses need to consider under a digital regime?</i></p>
Theme 3: Copyright Commons	<p>3.1</p> <p>Software & The Intellectual Commons</p> <p><i>What do we mean by the 'commons' and how have some software developers attempted to keep their work within it?</i></p>	<p>3.2</p> <p>Protecting The Commons</p> <p><i>What legal, commercial and political arguments have occurred over the copyright commons?</i></p>	<p>3.3</p> <p>Copyright Commons & The Publishing Industry</p> <p><i>How can businesses survive in a copyright commons?</i></p>

Aims

Knowledge scope

Software And The Intellectual Commons introduces you to the notion of the Copyright Commons, and the technological ideas behind free content and software. It also brings you back to the issue of intellectual property legal regimes and their interpretation of the Copyright Commons. The Copyright Commons is an extension of earlier arguments regarding the position of creative freedom in relation to the rights of preceding creators and producers. It is a concept that emphasises the overwhelming importance of the public domain over that of the private, commercial domain. It is in this respect that the present element further develops the ideas introduced in previous elements on copyright and rights management. It raises the possibility that, in some areas of endeavour at least, there is no such thing as creators retaining an exclusive right in their work. All creativity builds on what has come before and it is hypocritical to presume otherwise. The Copyright Commons can thus be seen as a philosophical position as much as it is a concept that has evolved from technical innovation. This element explores material that attempts to define these ideas and also offers a sense of how they evolved.

Knowledge and capability aims

By the completion of this Learning Element you will have the capacity to:

- ⊗ identify the basic concepts and technology underpinning the Copyright Commons and freeware;
- ⊗ begin to understand some of the ways Copyright Commons supporters have attempted to challenge copyright and intellectual property law;
- ⊗ identify the key players in the Copyright Commons movement; and
- ⊗ form a knowledge base from which you can then argue through the issues of public interest and legal protection raised by the Copyright Commons issue.

Important terminology

The 'Learning Framework' is the overall educational endeavour of '*Copyright And Digital Rights Management*'. This is comprised of three 'themes', presented in the left-hand column of the Framework map. Each theme is divided into three learning 'processes', presented in the top row of the Framework map. Altogether this constitutes nine 'elements'. The Learning Framework is also referred to as the 'course'.

Learning processes

The primary learning process in this element is to discuss with fellow students the questions set out below. In your discussion you are to make reference to the readings listed underneath the questions. You should also seek out other material, starting from the list of weblinks provided.

You will notice that the information included along with the reference indicates the perspective of the reading, whether it tends to be:

Business,
Technology or
Cultural studies oriented.

In your discussions and learning activities you should take account of the different perspectives represented by the readings and acknowledge those in your responses. You may wish to concentrate on one approach over another, such as technological change taking place in the industry.

Learning activity: Online/Tutorial Issues

Engage in Online/Tutorial discussion in response to the following questions:

- 1) **What does the Copyright Commons mean?**
- 2) **How is the role of creators perceived under this concept?**
- 3) **What application does the concept of the “tragedy of the commons” have for the issue of free software/ideas?**
- 4) **Is free software financially “free”? If not, what does freedom mean here?**
- 5) **How is freeware technologically different from “non-freeware”?**
- 6) **What is the position of Australian law in relation to computer software and the “public domain”? Is this the same as the positions adopted by organisations such as CreativeCommons?**

Recommended reading:

In this element most of the key protagonists have a presence on the Internet. You are urged to use the sources listed below as starting points for further investigation into online sources.

Sources

When viewing this online you can click on a learning source title to go to the reading. Each reading in the list is provided with a label titled ‘**Perspective**’. Use this as a guide in determining its relevance to the three categories: Business, Culture and Technology.

Title:	Free as in Freedom: Richard Stallman's Crusade for Free Software
Author(s):	Williams, Sam
Year:	2002
City:	O'Reilly Online
Publisher:	Available at http://www.oreilly.com/openbook/freedom
Perspective:	Technology, Culture
Keywords:	GNU Project, Freeware, Copyright Commons
Abstract:	Biography of free software campaigner, Richard Stallman. Includes chapters discussing the GNU (Gnu's Not UNix) Project and Stallman's advocacy of open source software. The text is published by O'Reilly, who are open source publishers.

Title:	The Tragedy of the Commons
Author(s):	Hardin, Garrett
Year:	1968
Journal:	Science
Volume:	162
Pages:	1243-1248
Perspective:	Culture
Keywords:	Copyright Commons, Population Growth
Abstract:	[Quote from Author's conclusion] ‘Every new enclosure of the commons involves the infringement of somebody's personal liberty. Infringements made in the distant past are accepted because no contemporary complains of a loss. It is the newly proposed infringements that we vigorously oppose; cries of "rights" and "freedom" fill the air. But what does "freedom" mean? When men mutually agreed to pass laws against robbing, mankind became more free, not less so. Individuals locked into the logic of the commons are free only to bring on universal ruin; once they see the necessity of mutual coercion, they become free to pursue other goals. I believe it was Hegel who said, "Freedom is the recognition of necessity."’

Title:	The GNU Project
Author(s):	Stallman, Richard
Year:	2002
City:	Available on the Internet
Publisher:	http://www.gnu.org/gnu/thegnuproject.html .
Perspective:	Technology, Culture
Keywords:	Copyright Commons, Open Source Software, Advocacy of Freeware, History of Freeware Movement
Abstract:	This is an article by one of the originators of free software, and, hence, the copyright commons, Richard Stallman, who puts forward his justifications for this ideal and the reasons why he has advocated and fought so hard for it.

Australian Copyright Act 1968 (Act No. 63 of 1968 as amended)

[Copyright Act 1968.pdf](#)

World Intellectual Property Organisation (WIPO) Copyright Treaty 1996

[WIPO Copyright Treaty.htm](#)

Web sources

Lessig, L. (2002). <freeculture> presentation (flash & audio) from the O'Reilly Open Source Conference, 24 July 2002.

<http://lessig.org/freeculture>.

Creative Commons

creativecommons.org

Electronic Frontier Foundation

www.eff.org

Public Knowledge

publicknowledge.org

GNU Project

www.gnu.org

Assessment Task A option

You may wish to draw on the issues raised in this element, [Software And The Intellectual Commons](#), for your Assessment Task A (worth 25% of your overall grade).

To complete Assessment Task A you must write a proposal (of approximately, but not exceeding, 1,500 words) for the larger work that will constitute Assessment Task B. In choosing the format of this proposal refer to the range of assessment formats provided in the framework level description of this course. If applicable, you can draw on experience from your own workplace to provide examples of how these issues impact on the education, communication and/or business sectors.

The aim of Task A is to:

- (i) help you begin to format the structure of Task B; and
- (ii) help you begin to build the content for Task B.

You also need to consider how you will later integrate the final work you produce for Task A into Task B.

Note: You are required to do only one Assessment Task A throughout the course.

Choosing issues from [Software And The Intellectual Commons](#) as the springboard for your Assessment Task A does not necessarily lock you into pursuing them for Task B. For example, on completion of this task, you may decide to pursue a different theme for Task B.

Even if you choose not to base your Assessment Task on the issues raised in this element, the knowledge and capabilities you have gained here can be fed into the topic you eventually use as the basis for your Assessment Task A.

Note: Assessment Task A must be submitted by the end of week four.

Learning pathways

Transition from Learning Element 1.1

Having completed the learning process of this element (with or without completing the Assessment Task A option), you must decide which element to undertake next.

Possible transitions from this element are presented below, however it is recommended that you work out your own pathway in consultation with your teacher.

Pathway options

By the completion of this element, **Software And The Intellectual Commons**, you should have improved primary research capabilities and an in-depth empirical knowledge of the issues in this element as analysed from the perspectives of Technology, Business and Culture.

You may now wish to build on this empirical knowledge by exploring the **Conceptual And Critical** element of this Theme, **Protecting The Commons**. Alternatively, you may wish to pick up on any **Empirical And Experiential** elements you have yet to engage with, such as that entitled, **Digital Rights Management (DRM) Systems And The Law**. If you wish to tackle an **Applied And Transferred** element at this point, you need to bear in mind that it pre-supposes knowledge of issues you may not have yet covered.

Example pathways

	<i>Empirical And Experiential</i>	<i>Conceptual And Critical</i>	<i>Applied And Transferred</i>
<i>Theme 1: Print</i>	1.1 Existing Copyright Rules	1.2 Freedom V Protection	1.3 Copyright & The Publishing Industry
<i>Theme 2: Etext</i>	2.1 Digital Rights Management (DRM) Systems & The Law	2.2 DRM & Freedom	2.3 Industry Responsibilities Under DRM
<i>Theme 3: Convergence</i>	3.1 Software & The Intellectual Commons	3.2 Protecting The Commons	3.3 Copyright Commons & The Publishing Industry

About this Learning Element

Software And The Intellectual Commons introduces the notion of the Copyright Commons, and the technological ideas behind free content and software. It also comes back to the issue of intellectual property legal regimes and their interpretation of the Copyright Commons. The Copyright Commons is an extension of earlier arguments regarding the position of creative freedom in relation to the rights of preceding creators and producers. It is a concept that emphasises the overwhelming importance of the public domain over that of the private, commercial domain. It is in this respect that the present element further develops the ideas introduced in previous elements on copyright and rights management. It raises the possibility that, in some areas of endeavour at least, there is no such thing as creators retaining an exclusive right in their work. All creativity builds on what has come before and it is hypocritical to presume otherwise. The Copyright Commons can thus be seen as a philosophical position as much as it is a concept that has evolved from technical innovation. This element explores material that attempts to define these ideas and also offers a sense of how they evolved.

Keywords

Australian Copyright Act

Copyright Commons

Creative Commons

Creator

Digital Intellectual Property

Freedom

Freeware

Internet Publication

Open Source Code

Ownership

Publisher Rights

Shareware

Software

World Intellectual Property Organisation (WIPO) Copyright Act