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Open Source and
Open Access Publishing

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Open Source and Open Access Publishing

- **Open source can cross IP categories with (especially) Copyright, Patent, and Trade Secret implications.**
- **Open Access Publishing usually presents only copyright implications.**

Many pros and cons to Open Source (and defenders/true believers on each side)

- **Open source solutions encourage creativity and participation**
 - **But in new media, open source solutions are rough duty for “every-person.” Ya’ pretty much have to be a programmer to play.**

pros and cons to Open Source

- **Open source solutions support the “cut and paste” and “sharing” cultures suggested by new media.**
 - **But the new media industries have thrived under a proprietary rather than open model. The businesses don’t like “cut and paste” and “sharing.”**

pros and cons to Open Source

- One can make money working with open source solutions.
 - Generally speaking, there's *more money* to be made via proprietary software

pros and cons to Open Source

- Aspects of open source solutions (mostly, their particular implementations) can be protected via IP law, but open source prefers *weak* IP protection.
 - Generally speaking, the software industry prefers the *strong* US approach rather than weak IP protection.

pros and cons to Open Source

- **HOWEVER: Open source solutions REQUIRE IP laws at the foundation.**
- **If a person doesn't control the rights (via copyright or patent) one can't make it free to copy or use.**
- **OK, it sounds like an oxymoron, but remember that contract law rules. Open source licenses are a form of contract that sets aside some or all of the rights inherent in the legal protections of the code.**

Unix Came First

- **AT&T/Bell Labs, GE, MIT**
- **UC Berkley**
- **DARPA/ARPANET (the internet)**

- **Note how this mix of open source players eventually led to not so open source disagreements about “ownership.”**

Stallman Became The Best

- GNUs (not unix)
- [Free Software Foundation](#)
- “You have the freedom to modify the program to suit your needs. (To make this freedom effective in practice, you must have access to the source code, since making changes in a program without having the source code is exceedingly difficult.)
- You have the freedom to redistribute copies, either gratis or for a fee.
- You have the freedom to distribute modified versions of the program, so that the community can benefit from your improvements. (Stallman, “About”)

So What's Free?

Gratis and/or Libre

- **Gratis, free of cost**
- **Libre, free of restrictions**
 - **And all derivatives must also be free in these ways.**
- **Resultant software might have charges associated . . . But the code is free to use. BOTH the compiled AND the source code**

GNU GPL

- The [General Public License](#) requires that any derivative works be accompanied by the same free license.
- One can do open source, but not use the GPL. The GPL is more restrictive against combining open source material with non-open source material.
- GPL excludes IP constraints but does not rule out developing commercially viable software.

Open Source Initiative

[OSI](#) offers more diverse ways to dice and slice open licenses.

IP Arguments over Open Source

- **Novell, Microsoft, SCO, IBM, Sun, Nokia, and Apple and many others have litigated over the code (the kernel) at the heart of UNIX and LINUX.**
- **Whether versions of the kernel are open source at all is hotly contested.**

Google v Oracle

Electronic Freedom Forum

- <https://www.eff.org/cases/oracle-v-google>

Ronald Mann, “Argument analysis: Justices debate legality of Google’s use of Java interfaces in Android software code.” *SCOTUSblog*, Oct. 9, 2020.

- [<https://www.scotusblog.com/2020/10/argument-analysis-justices-debatelegality-of-googles-use-of-java-in-android-software-code/>](https://www.scotusblog.com/2020/10/argument-analysis-justices-debatelegality-of-googles-use-of-java-in-android-software-code/)

Many pros and cons to Open Access Movement (and defenders/true believers on each side)

- **Early networked computing breeds
“sharing”**
 - **ERIC**
 - **MEDLINE**
 - **Project Gutenberg**

Many pros and cons to Open Access

- <https://www.openaccess.nl/en/what-is-open-access/pros-and-cons>
- <https://library.fvtc.edu/OA/AndOERProCon>

Many pros and cons to Open Access

- **Online journals begin to develop, most connected to their print predecessors but others not so much. Some focused on:**
 - **Rapid dissemination**
 - **Less adjudication**
 - **Lower cost of entry for readers**

Many pros and cons to Open Access

- **Facts of life in academic publishing (esp. for articles more than books)**
 - **Authors/Faculty don't make any money (some for books, but big money only if for a course like COM 101 that's required by most schools). Authors make nothing for journal articles.**
 - **Few subscribers (not a lot of diffusion)**
 - **Tend toward esoteric**
 - **Perhaps partially/indirectly funded (in many cases) by public dollars.**

Many pros and cons to Open Access

- **Facts of life in conserving academic publishing**
 - **Subscription rates/costs to libraries exploded**
 - **As costs went up, collections were culled.**
- **THEN corporate giants (e.g., Lord and Taylor) made deals with the academic outfits generating the journals.**
 - **Once they controlled online distribution, library rates went up higher**

Many pros and cons to Open Access

- **Legislatures/Government/Agencies got involved**
 - **Mandates were extended that if one took Federal money, one had to publish public access rather than proprietary.**
 - **Some schools jumped on this bandwagon as well, esp. state supported public universities.**

Many pros and cons to Open Access

- **Hasn't fully caught on: still loads of proprietary journals belonging to disciplinary associations.**
- **Hasn't brought down costs to libraries: those are up**
- **HAS contributed to wider access**
 - **BUT SO HAS THE WORK OF THE BIG CORPORATE FIRMS THAT OVERCHARGE.**

Many pros and cons to Open Access

- **And, mandates for open publishing compromise in-place IP author rights.**
 - **Why should I lose my IP rights just because I'm in a STEM field at a University of California school?**
 - **And if I do, will I be less productive?**

Plan S

- In September 2018, 11 Science Europe Member Organisations, supported by the European Commission and the European Research Council, created cOAlition S and launched Plan S, an initiative to accelerate the transition to full Open Access.
- Plan S requires that recipients of research funding from cOAlition S organizations make the resulting publications available immediately (without embargoes) and under open licenses, either in quality Open Access platforms or journals or through immediate deposit in open repositories that fulfil the necessary conditions.
- Science Europe continues to support its Member Organizations in implementing Plan S and has actively contributed to grow cOAlition S into a global movement that is supported by a large number of stakeholders and research communities.
- More information and guidelines for Plan S implementation can be found on the [cOAlition S website](#).
- Initially opposed by most publishing conglomerates
- Since 2018, Cambridge UP, *Nature*, and *Science* have implemented Plan S features.

Open Publishing is Catching On, at least in California

- “Big Win For Open Access, As University Of California Cancels All Elsevier Subscriptions, Worth \$11 Million A Year.”
 - *As a leader in the global movement toward open access to publicly funded research, the University of California is taking a firm stand by deciding not to renew its subscriptions with Elsevier. Despite months of contract negotiations, Elsevier was unwilling to meet UC's key goal: securing universal open access to UC research while containing the rapidly escalating costs associated with for-profit journals.*
 - *In negotiating with Elsevier, UC aimed to accelerate the pace of scientific discovery by ensuring that research produced by UC's 10 campuses -- which accounts for nearly 10 percent of all U.S. publishing output -- would be immediately available to the world, without cost to the reader. Under Elsevier's proposed terms, the publisher would have charged UC authors large publishing fees on top of the university's multi-million dollar subscription, resulting in much greater cost to the university and much higher profits for Elsevier.*
 - <https://www.techdirt.com/articles/20190304/09220141728/big-win-open-access-as-university-california-cancels-all-elsevier-subscriptions-worth-11-million-dollars-year.shtml>
- Don't forget, this is the UC system. It was headed this direction. Not many have yet followed.