

# The current and future legal framework

*A Threat to Free Software, Free Information  
and to our Free Society*

Alexandre Dulaunoy

adulau@foo.be - adulau@freearchive.org

NGO/ASBL AEL Association Electronique Libre (Belgium)

# Agenda 1/2

- General Principles around Freedom in Computer Science
- Freedom : an Ethical approach
- Legal Framework
  - A Paradoxical Situation or the importance of the balance
- Legal Protection against the Circumvention of the Copy Protection
  - The land of DMCA, EUCD, DMCRA...

# Agenda 2/2

- Imposing the use of copyright protection systems
- Activism list
- Conclusion ?
- Bibliography/ref/link
- Q&A

# Freedom in Computer Science 1/4

- François-René Rideau
  - *"The Laws of Human Beings must not contradict that which Nature renders impossible to contradict"*
    - The exclusion principle of physical objects
    - The non-exclusion principle of non-physical objects

You can kill a human being but not an idea...

# Freedom in Computer Science 2/4

- Bernard Lang

- Ecology of ideas

*"...des idées, des concepts, et des objets immatériels qui, pour se développer, s'enrichir et s'épanouir, ont besoin de circuler, de s'associer, de se confronter, de se fertiliser les uns les autres."*

# Freedom in Computer Science 3/4

- John Perry Barlow (EFF) - 1996 (CDA reaction)
  - A Declaration of the Independence of Cyberspace  
*"Your legal concepts of property, expression, identity, movement, and context do not apply to us. They are all based on matter, and there is no matter here."*

# Freedom in Computer Science 4/4

- Richard Stallman (FSF)
  - Four Freedoms of Free Software
    1. The freedom to run the program, for any purpose.
    2. The freedom to study how the program works, and adapt it to your needs.
    3. The freedom to redistribute copies so you can help your neighbor.
    4. The freedom to improve the program, and release your improvements to the public, so that the whole community benefits.

Accessibility of source code is a necessary condition for free software.

# Freedom : an important note

- Freedom is an ethical issue
- Freedom is not a legal issue
- Freedom is here without legislation
- Disclaimer :
- But after we'll talk about Freedom and legislation because legislation is hurting Freedom...

# Legal framework 1/2

- The balance of a legal framework that protects Freedom and a legal framework that removes Freedom. *Or The paradox of the legal blob.*
- Legal framework that can be used to "protect" Freedom :
  - The positive usage of the Copyright (e.g. The GNU General Public License and all the free licences) (Berne Convention)
  - An European Directive allows reverse engineering for interoperability ( Japan)
  - The paradoxical usage of the Munich Convention in Europe (article 52c).

# Legal framework 2/2

- WIPO Copyright Treaty (1996 version) (author->editor)
  - Article 11 (-> DMCA / EUCD -> national laws)
  - Article 12 (-> "Rights Management Information" // art. 11)
- Software Patents (in US / Japan)
- "IPR" Enforcement Directive (-> national laws in 20 months)
- International "Cybercrime" Treaty (Council of EU + ...)
- DRM law (proposal directive)
- Data retention (european directive proposal)

# Legal Protection against the Circumvention of the Copy Protection

- WIPO Copyright Treaty (1996 version)
  - *Obligations concerning Technological Measures*  
*Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.-> 2001/29/CE -> DMCA,EUCD*

# Legal Protection against the Circumvention of the Copy Protection

- (US) DMCA (Digital Millennium Copyright Act)
  - Multiple cases : bnetd, DeCSS, Elcomsoft, ...
- (EUROPE) EUCD (European Copyright Directive) (2001/29/CE)
  - Current transposition in the national law (proposal in the Chamber representatives)
  - Check <http://www.eucd.info/> -  
<http://wiki.ael.be/index.php/EUCD-Status>
- -> Fair use/fair dealing, Computer Science Research, Competition, Cryptography, Privacy, Archiving, ...

## Imposing the use of copyright protection systems

- SSSCA Security System Standards and Certification Act proposal
  - CBDTPA Consumer Broadband and Digital Television Promotion Act
- A work in-progress exists on a proposal Directive for Europe on imposing DRM (-> slowdown)
- This type of law would require equipment manufacturers to embed government-approved copy protection systems into all computer equipment.
- On the technical side, there is also some evolution on “DRM” ...

# Activism 1/2 (pick one or more)

- Create/use/modify/distribute Free Software
- Create/use/modify/distribute Free Content/Information
- Promote privacy & anonymity
- Promote Free Standards and Free of access Standards
- Discuss and don't use products including "DRM"
- Reject and talk about "Corrupt audio"
- Use correct terms (from GNU/Linux to not use "Intellectual Property" ...)
- Join / Help / make a donation to an association (FSF, EFF, FSF Europe,....)

# Activism 2/2 (pick one or more)

- Check and preserve public domain content
- Promote the right to write free content/information/software
- Contact your local political representatives and talk about these subjects
- Start a 'very' local group to promote free software and/or free information
- Ask and verify the right of information in the public sector
- ...

# Conclusion?

- Freedom is an ethical issue
- Long terms plan are difficult or impossible
- Day to day activism to promote the ethical value of Freedom in the information society
- “Freedom of the Information” is a reality but some are trying to create new boundaries... It’s time to react.

# Bibliography

Right to read, R. Stallman, <http://www.gnu.org/philosophy/right-to-read.html>

Manifeste de la Libre information, <http://fare.tunes.org/Manifeste.fr.html>

A Declaration of the Independence of Cyberspace <http://www.eff.org/barlow/Declaration-Final.html>

Cybercrime law

[http://www.aclu.org/issues/privacy/Cybercrime\\_Feature.html](http://www.aclu.org/issues/privacy/Cybercrime_Feature.html)

[http://europa.eu.int/eur-lex/en/com/pdf/2002/com2002\\_0173en01.pdf](http://europa.eu.int/eur-lex/en/com/pdf/2002/com2002_0173en01.pdf)

Ten Fallacies of Internet Censorship (Prof. Jeffrey Shallit)

<http://www.csi.uottawa.ca/dduchier/misc/infohighway1.html>

Software Patents

<http://www.ael.be/node.php?id=52>

<http://www.ffii.org/index.en.html>

# Q&A

- adulau@foo.be - alexandre.dulaunoy@ael.be
- 3B12 DCC2 82FA 2931 2F5B 709A 09E2 CD49  
44E6 CBCD