

Positive Copyright and Open Content Licenses: How to Make a Marriage Work

ASK Working Paper

Abstract

Positive copyright appears to have progressively taken apart from its normative function of ensuring a fair and efficient transmission of human knowledge. The private sector is seeking to counterbalance this phenomenon by adopting legal tools that expand the public domain of knowledge, such as web-based licenses modeled by "open access" attitude. The increasing world-wide favor towards Creative Commons licenses confirms their aptness to transform copyright law in a tool flexible enough to serve authors' various purposes. Such a spontaneous counterbalance experiences though many difficulties, mainly due to the structure that positive copyright has adopted over the last years.

The current situation above mentioned is the stand-point to look back at how authors were disseminating their works before the advent of the Internet. From a historical view-point copyright has always accomplished both functions of economically rewarding authors and enabling communication of their creations to the public. This latter goal is achieved by means of statutory mechanisms limiting the freedom of contract between authors and their counterpart (publishers in a broad sense), in order to enforce the authors' capacity to spread their works. However, in the current digital environment these mechanisms are not anymore likely to accomplish their original functions.

This paper seeks to explore an adjustment that will permit authors to take advantage of all the new means of commercial exploitation and non-commercial dissemination of their works offered by the Internet. Such an adjustment aims also at realigning positive and normative copyright by encompassing the use of open access licensing within the current copyright framework.