

<start>



SOME RIGHTS RESERVED

“regulation is like sausages: the less
you know about how it’s done, the
better for your appetite”*

*The Editor of New York Times to Noam Chomsky in “Manufacturing
Consent”, the documentary, 1991, 39’40”.

regulation + ecologies + beyond

**Open your mind:
Participation, transparency and openness in the Creative
Commons project in the context of Free/ Open Source principles**

Prodromos Tsiavos

Creative Commons England &
Wales

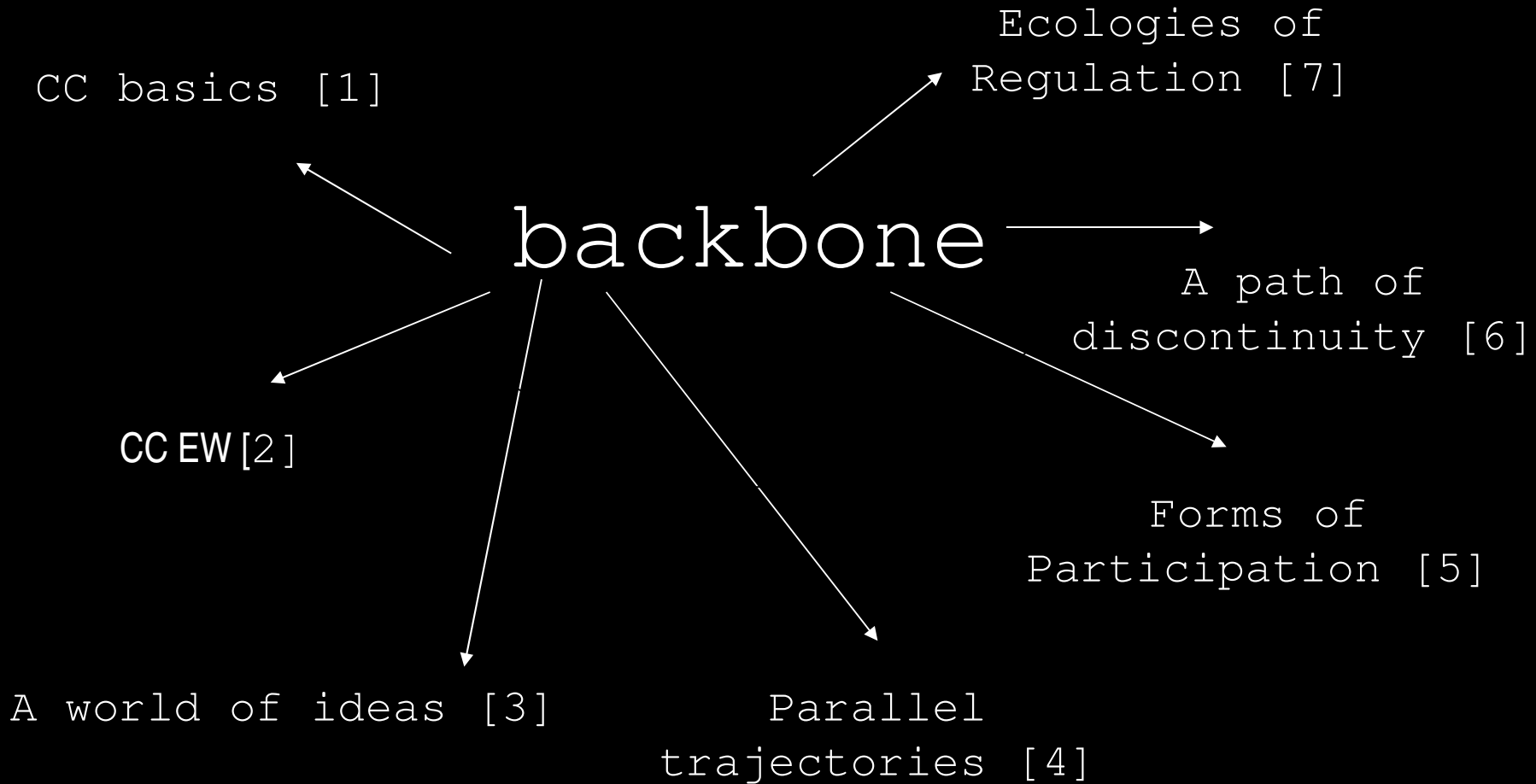
The London School of
Economics

Date: 11.04.06

OSS_Watch, Said
Business School



SOME RIGHTS RESERVED



[1]

Creative Commons: the basics



SOME RIGHTS RESERVED

Founded 2001

1st Project: December 2002

Initiation: Berkman/ Harvard

Housed @ Stanford Law School

[chronicle]

By:

James Boyle

Michael Carroll

Lawrence Lessig

Hal Abelson

Eric Saltzman

Eric Eldred

run by International Lawyers and Academics

[an NGO]

(mother ship): Center for the Public Domain and
various other charitable foundations

[supported]

CC-England and Wales:

The London School of Economics

- providing a set of user-friendly online licenses combined with a sophisticated search technology

[middle ground]

- the result is a new global standard or layer of copyright law promoting the dissemination of digital content and the free exchange of ideas

- authors, musicians and other creators of content can use these licenses to protect some of their ownership rights, while giving others away

[1]

Human-Readable: Commons Deed

[2]

Lawyer-Readable: Legal Code

[three expressions]

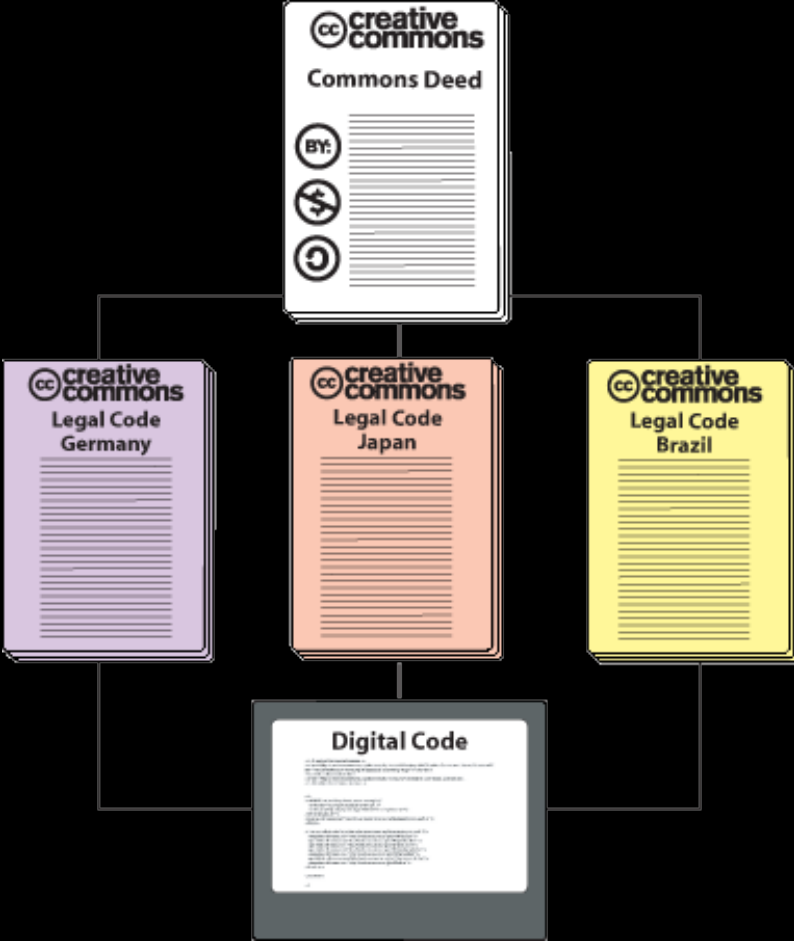


[3]

Machine-Readable: Meta Data

Logo + Link

schematic



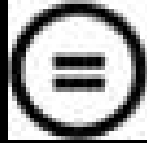
logos



Attribution



No Commercial Use



No Derivative Works



Share Alike

Creative Commons England and Wales

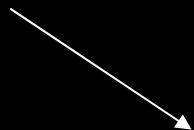


A story of licences translation

Original CC licences [February 2004]

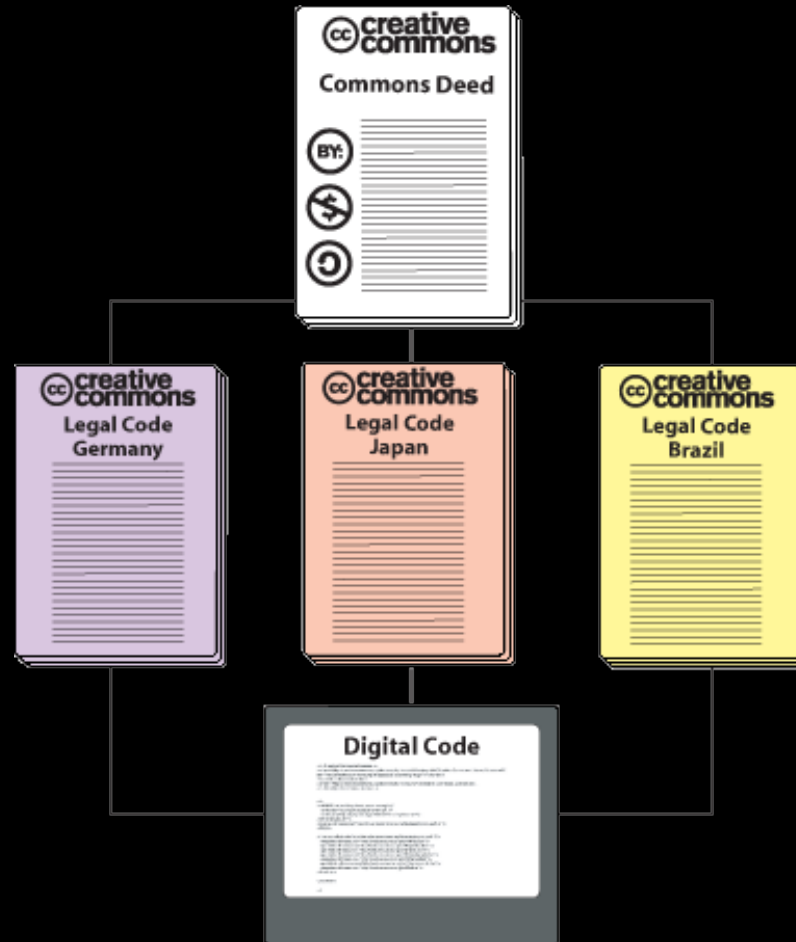
A story of licences translation

Original CC licences [February 2004]



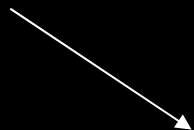
First CC UK licences – Law Firm [March –May 2004]

Schematic



A story of licences translation

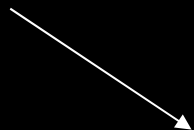
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A story of licences translation

Original CC licences [February 2004]



First CC UK licences – Law Firm [March –May 2004]



Amended CCUK licences – Oxford Team
[July 2004]



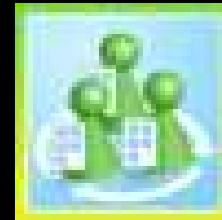
- BBC initiative
- Worked together on the drafting of the licences
- Issues as a result of their charter
- Future alignment?



Give Credit



No Endorsement



Share Alike



No Commercial Use



UK only



Sorry, you've been **declined** because our system shows that you are outside the UK.

→ You're wrong, I *am* in the UK

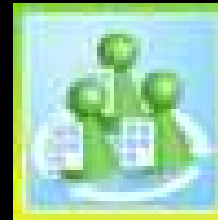
- Not really enforced
- Some elements may be included in the CC licences?



Give Credit



No Endorsement



Share Alike



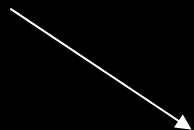
No Commercial Use



UK only

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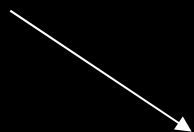
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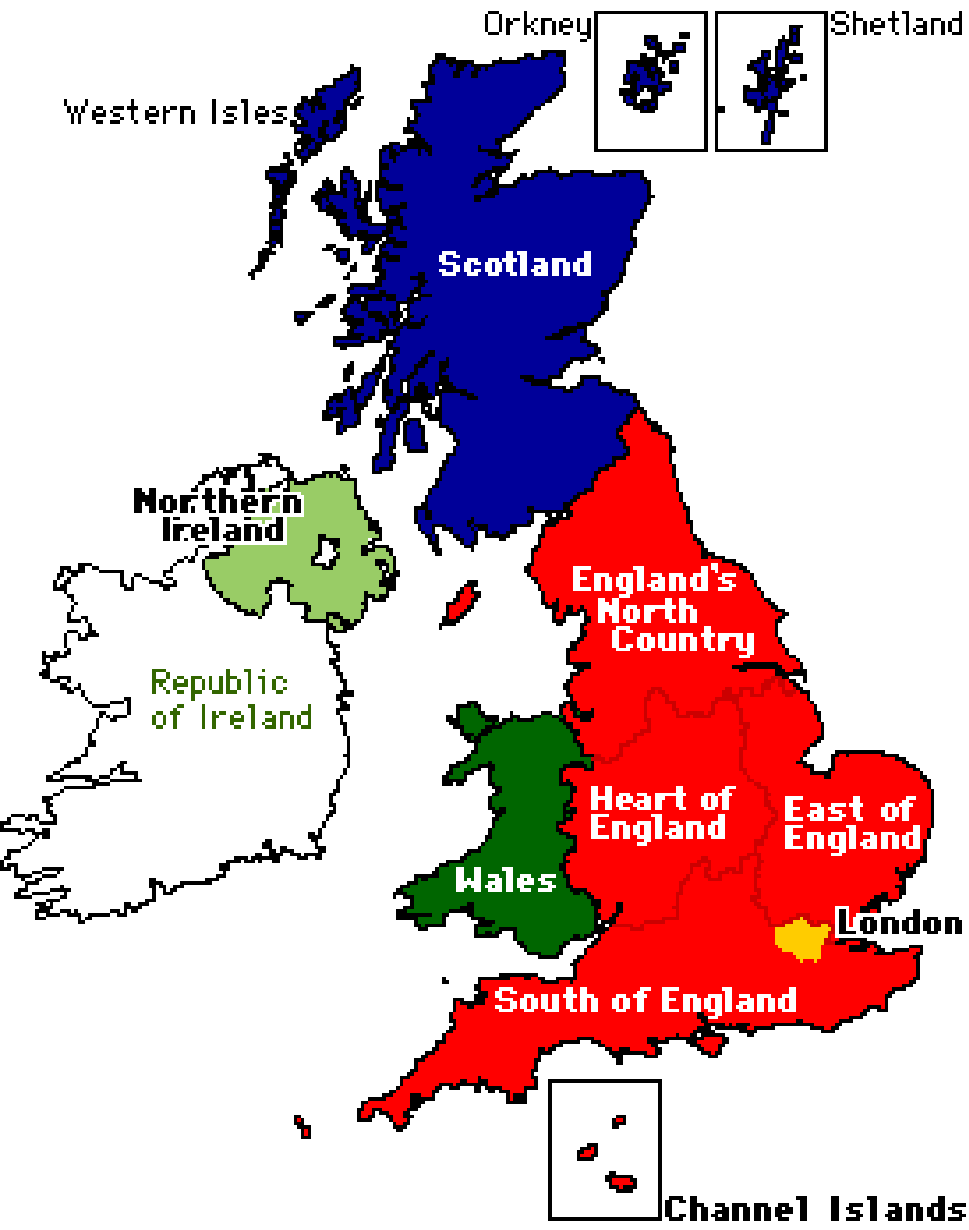
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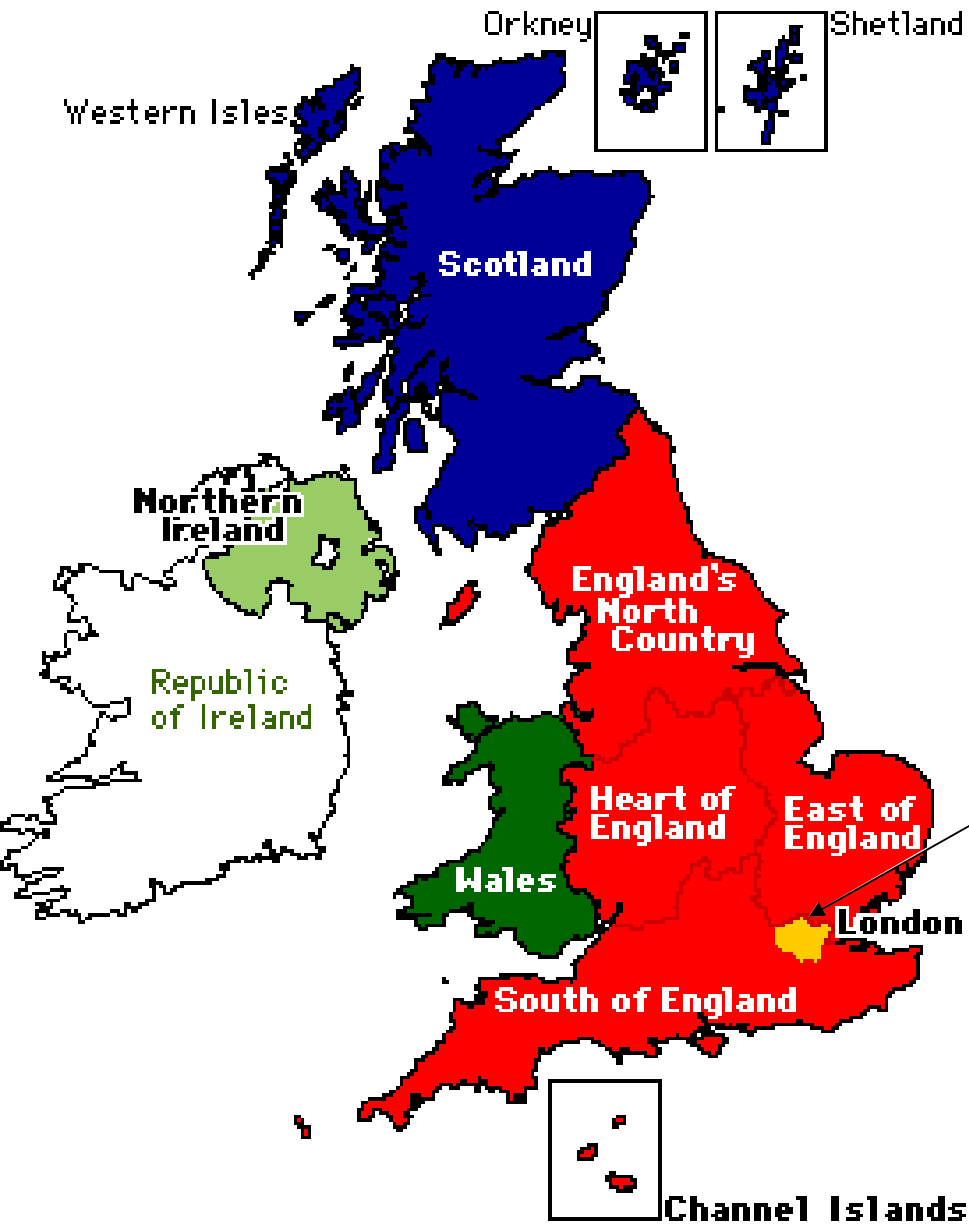


Amended CCUK licences – Oxford Team
[July 2004]



The BBC Creative Archive – Oxford Team and
BBC team [October-November 2004]





We are here

London

A story of licences translation

Original CC licences [February 2004]

First CC UK licences – Law Firm [March –May 2004]

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[July 2004]

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A story of licences translation

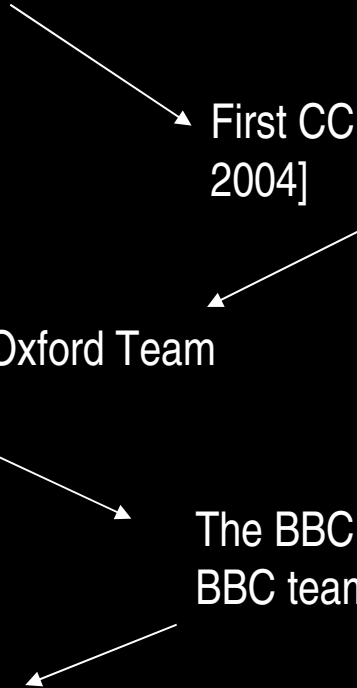
Original CC licences [February 2004]

First CC UK licences – Law Firm [March –May 2004]

Amended CCUK licences – Oxford Team
[July 2004]

The BBC Creative Archive – Oxford Team and
BBC team [October-November 2004]

CCEW licences 2.0 – Oxford and BBC [March 2005]



A story of licences translation

Original CC licences [February 2004]

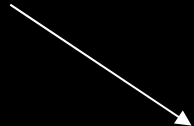
First CC UK licences – Law Firm [March –May 2004]

Amended CCUK licences – Oxford Team
[July 2004]

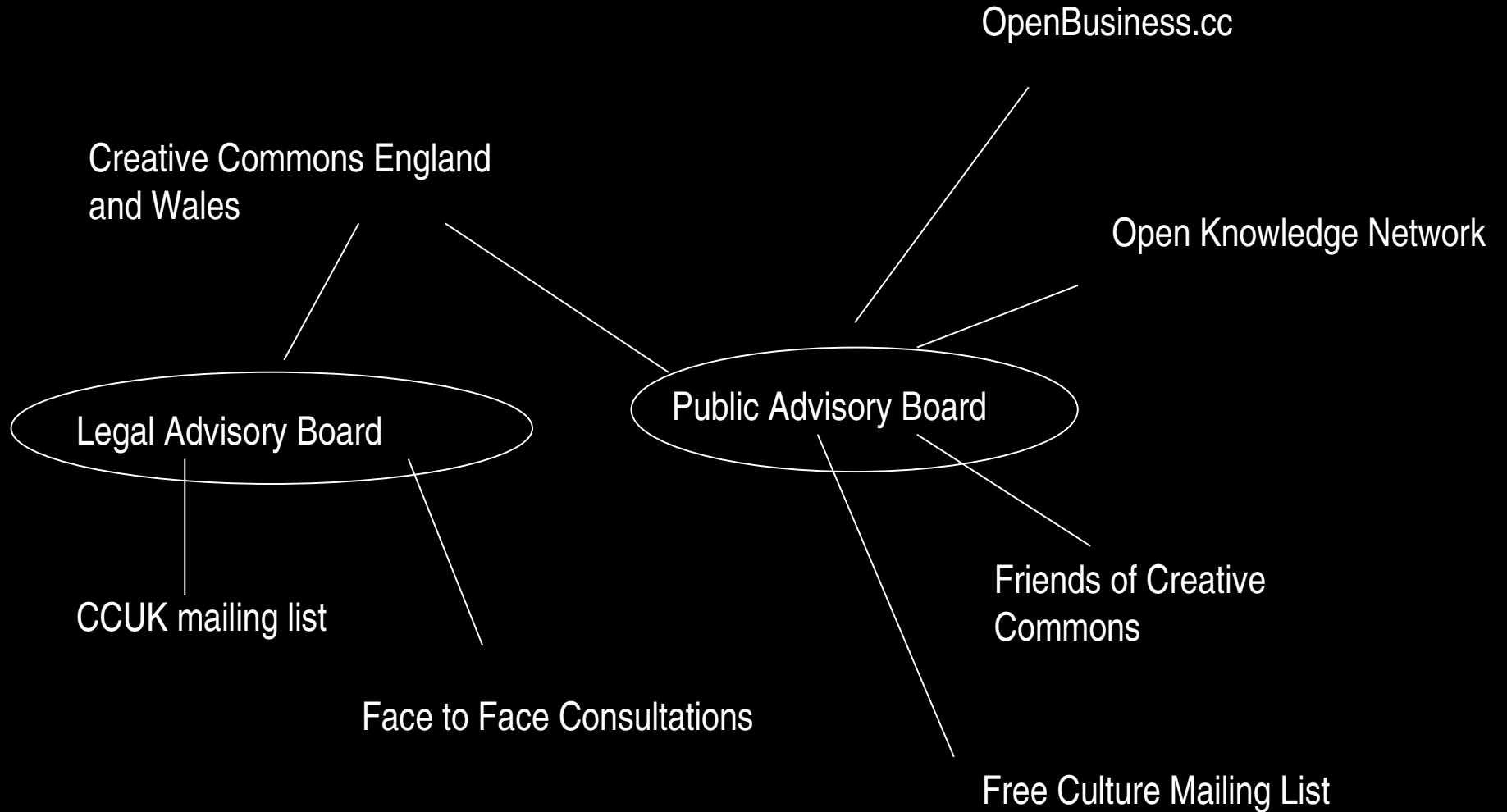
The BBC Creative Archive – Oxford Team and
BBC team [October-November 2004]

CCEW licences 2.0 – Oxford and BBC [March 2005]

CCEW licences 2.5 – LSE following CC
Scotland [April 2006]



Organizational Structure



[3]

A world of Ideas

Lessig and Stallman I

We stole the basic idea from the Free Software Foundation -- give away free copyright licenses. (...)The idea (again, stolen from the FSF) was to produce copyright licenses that artists, authors, educators, and researchers could use to announce to the world the freedoms that they want their creative work to carry.” (Lessig 2005b)

Lessig and Stallman II

Owners often describe the current state of the law, and the harsh penalties they can threaten us with. Implicit in this approach is the suggestion that today's law reflects an unquestionable view of morality---yet at the same time, we are urged to regard these penalties as facts of nature that can't be blamed on anyone. This line of persuasion isn't designed to stand up to critical thinking; it's intended to reinforce a habitual mental pathway. It's elementary that laws don't decide right and wrong. Every American should know that, forty years ago, it was against the law in many states for a black person to sit in the front of a bus; but only racists would say sitting there was wrong.”(Stallman 2002)

Lessig and Stallman III

Like the Free Software Movement, we believed this device would help **open a space for creativity freed of much of the burden of copyright law**. But unlike the Free Software Movement, our aim was not to eliminate "proprietary culture" as at least some in the Free Software Movement would like to eliminate proprietary software. Instead, we believed that by building a buttress of free culture (meaning **culture that can be used freely at least for some important purposes**), we could **resist the trends** that push the other way.”
(Lessig 2005d)

Some elements to be taken into
consideration

We stole the basic idea from the Free Software
Foundation

Owners

today's law

unquestionable view of morality

facts of nature

critical thinking

habitual mental pathway

laws don't decide right and wrong

only racists would say sitting there was wrong

open a space for creativity freed of much of the
burden of copyright law

culture that can be used freely at least for some
important purposes

Resist the trends

Back to theory

- “Along one front of the battle between Critical Legal scholars and others is a struggle over the nature of social transformation, a debate over the ease with which a society should be able to change itself from what it is to something else” (Lessig 1989)

Back to theory

- “Along one front of the battle between Critical Legal scholars and others is a struggle over the nature of **social transformation**, a debate over the ease with which a society should be able to change itself from what it is to something else” (Lessig 1989)

Parallel
Trajectories

Bo Dahlbom's Four Stages of Computing

- Limitation: make a point not give a historical account
- Sources: Dahlbom (1997, 2002, 2003), Ceruzzi (1991)
- Idea: trace the evolution of the user – creator – organizational entity triangle

Stage I: Calculators

- Organizational Setting: the military, science research centers
- Creator: scientists
- User: scientists (as an interface), the organization

Stage II: Data set handlers

- Organizational Setting: government, large organizations
- Creator: software developers
- User: specialized personnel (as an interface), the organization

Stage III: Personal Computing

- Organizational Setting: SMEs, Individual users
- Creator: software developers
- User: individual users, SMEs

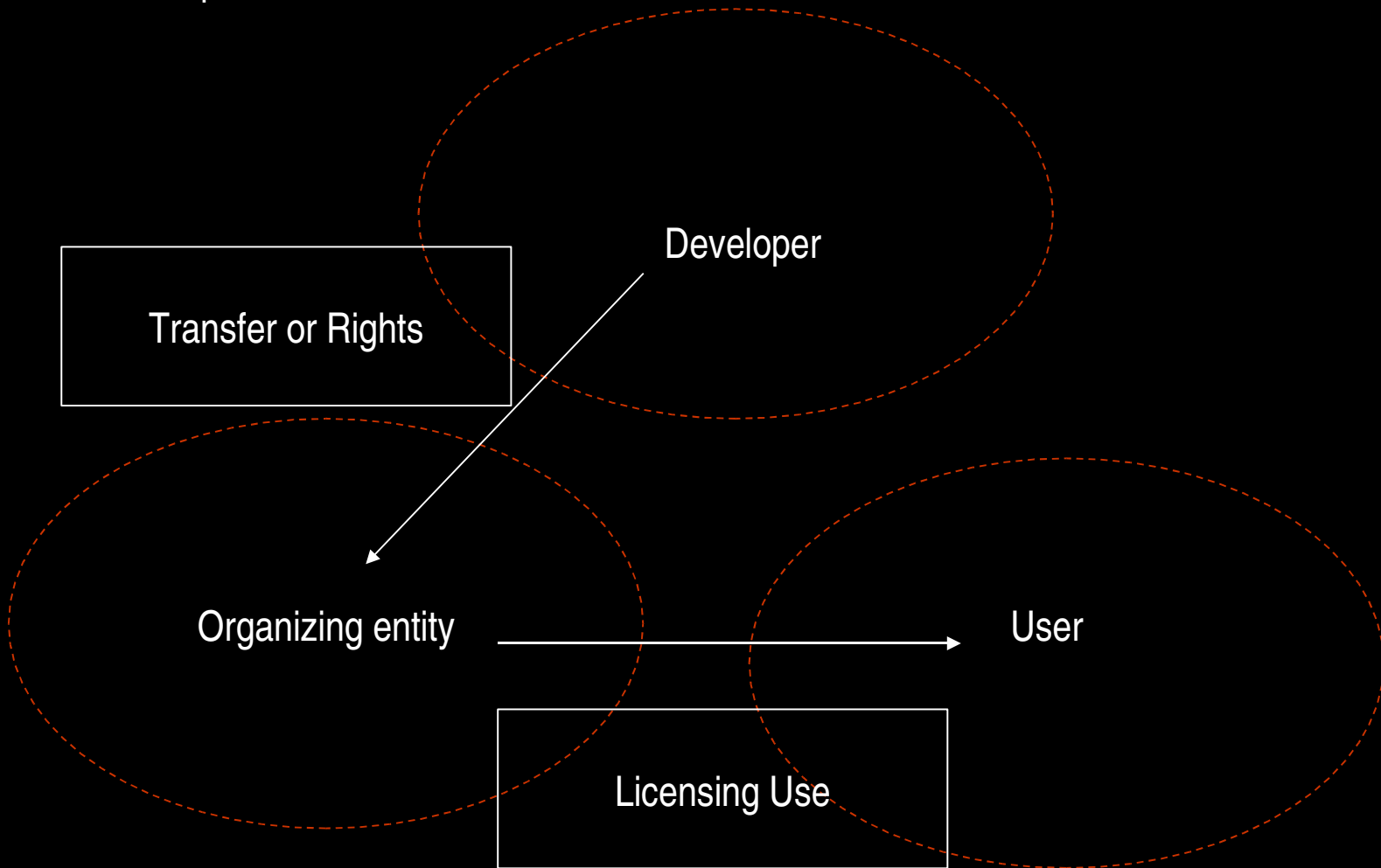
Stage IV: Networking and Ubiquitous Computing

- Organizational Setting: ubiquitous use
- Creator: software developers, recombination of elements by non experts
- User: individual users, SMEs, non experts for daily tasks

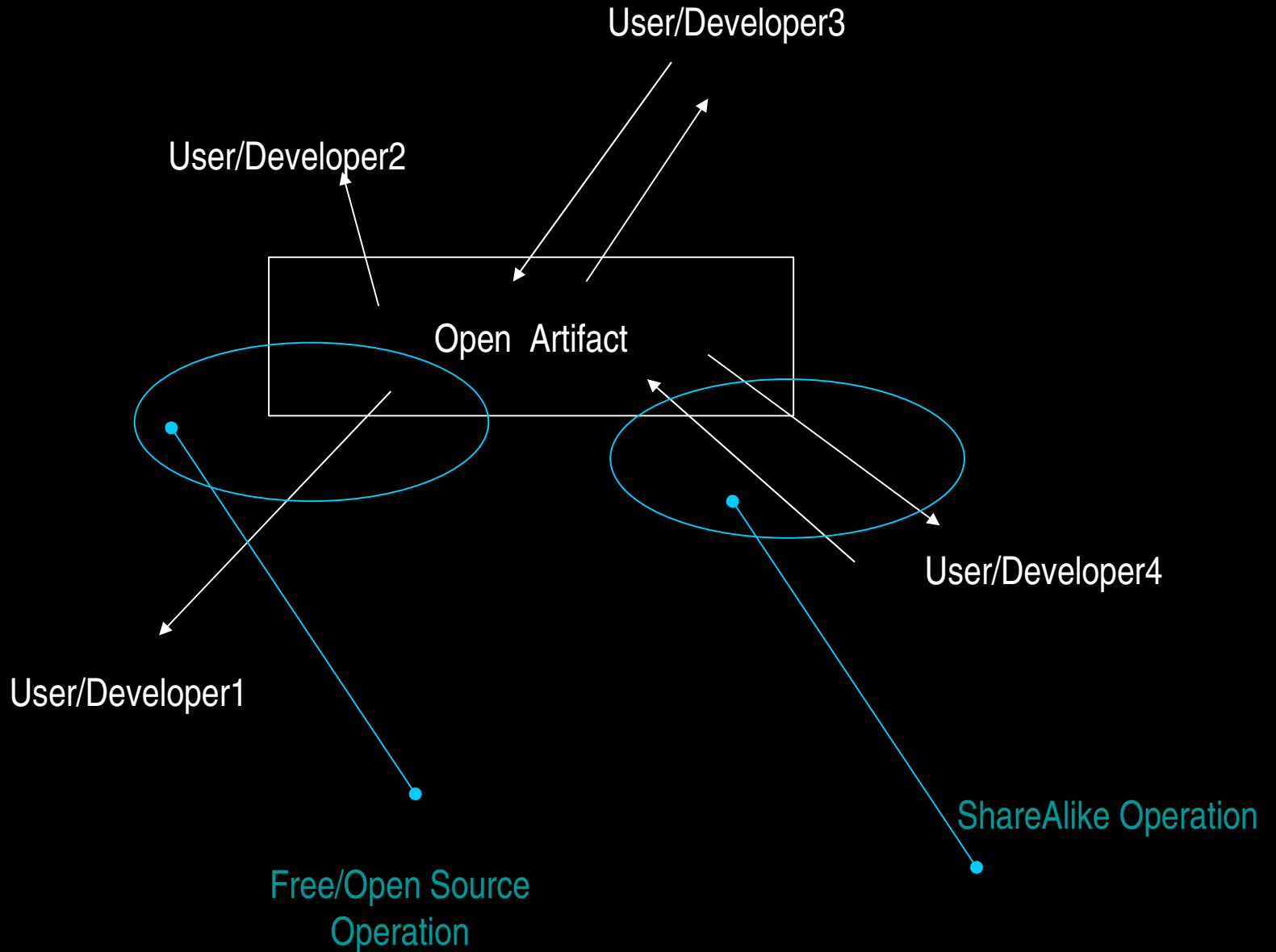
From development to cultivation

- The four stages of Dahlbom's model represent a gradual movement to a network or ecology model for how technology is developed and used
- Dahlbom and Janlert (1996) propose the idea of cultivating rather than developing and Information System

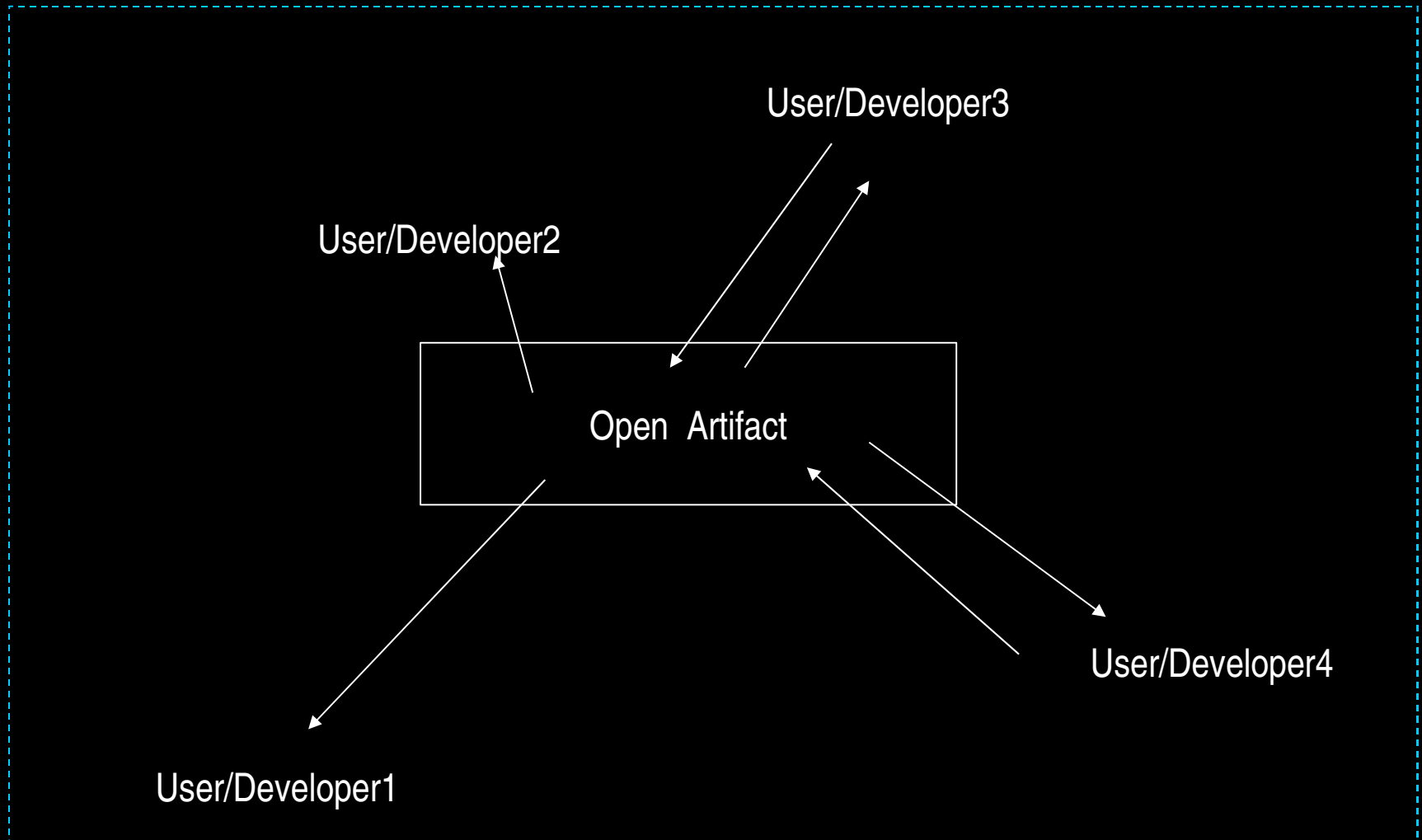
Stuck in the past



The GPL Structure



The GPL Structure



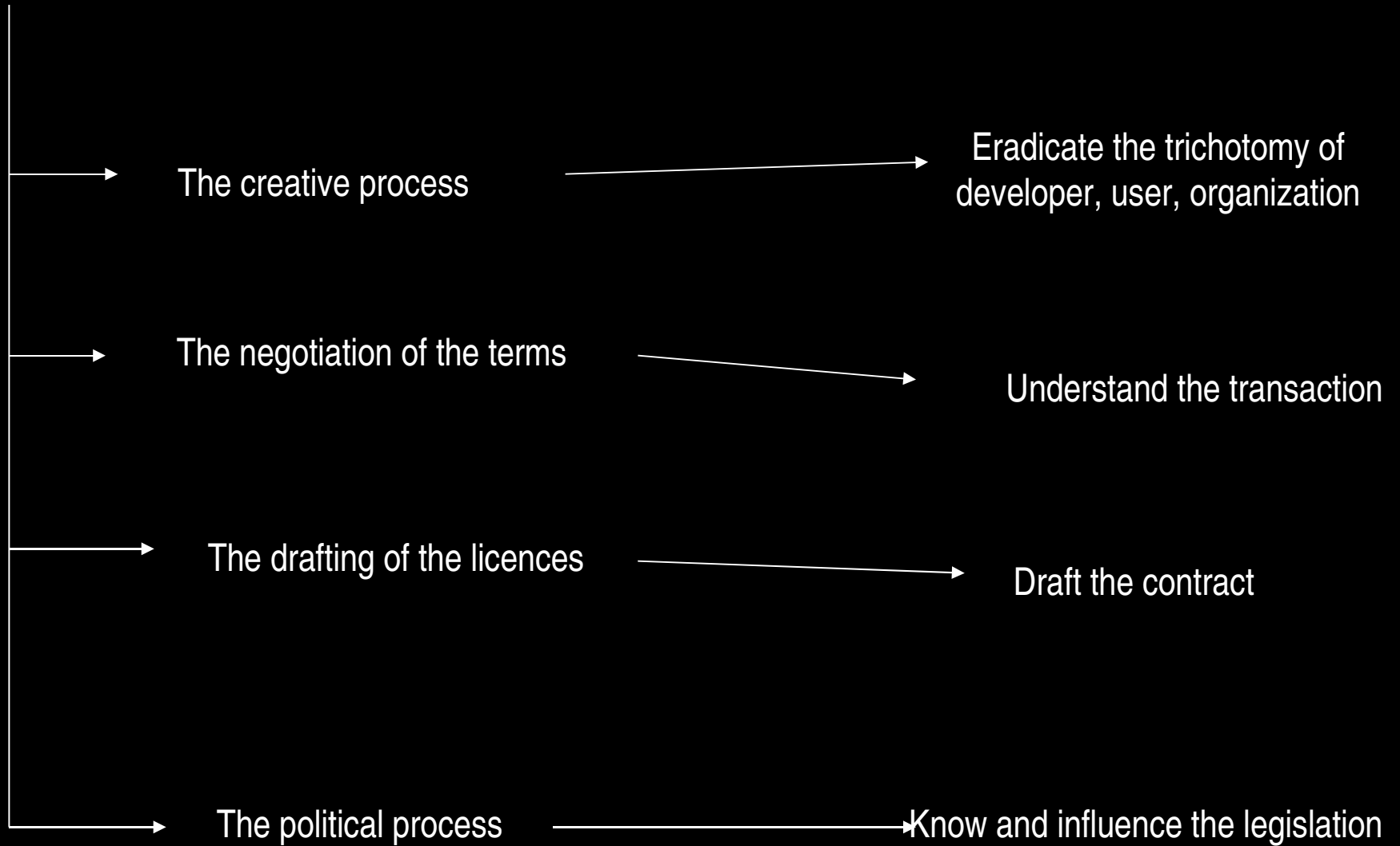
The organization is the product

[5]

Forms of Participation

Participate in

HOW?



Understanding the legal instruments



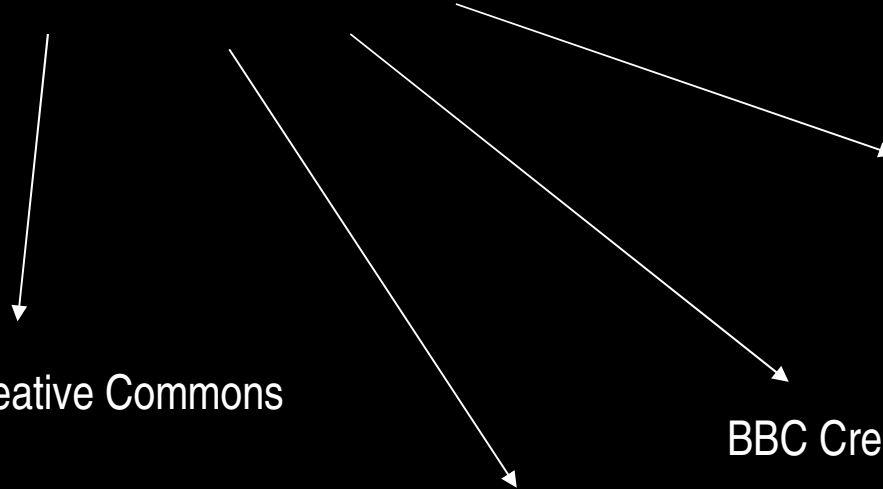
Icons + simple language

Creative Commons

JISC

BBC Creative Archive

ClearWare.org



Participate in the drafting and use of the licences

- Forums for the development of licences and discussions on their issues and problems
 - Debian Legal
 - Cc-Licences mailing list
 - GPL
 - FDL new version
 - More focused groups (e.g. JORUM)
- Emergence of new forms of licences
 - CC mixer
 - Commercial Commons

- Choice of licence
- **Most importantly there is realization that I can license my own work according to my own needs and choices**

Participate in the political process

- By debating on the content and use of the licences, IPR issues become less esoteric
 - By understanding I may need to license my works, I start understanding:
 - how copyright law works
 - how copyright law DOES NOT work
 - An emancipation process
- More focused action is possible:
 - Patent Directive Recall
 - WISIS and open education policies
 - Creation of Open Publishing
 - Creation of Open Archives
 - FLOSS as a consideration for the European Commission
 - Calls for responses to reviews
 - Gowers Review
 - EU database directive
 - Scientific Publications
 - Collecting Societies

[6]

A path of
discontinuity

Institutional basis and history

- Free Software Foundation and Creative Commons are structurally and historically different

Age: 45

Background:

Economics

Management

Philosophy

Law

• **Constitutional law professor**

• **Clerk for Richard Posner/ Antonin Scalia**

• **Special interest in former Soviet Union democracies**

• **Free Speech on the Net**

• **IPR - Commons**

[Lawrence (Larry) Lessig]

(that's him)



The GPL

case

- Time: 1984
- Place: MIT
- Context: Printing out material
- Human Actors: Richard Stallman (software developer)
- Source of problem: disparity between working practices/ social ethos and Copyright Law
- Solution: the General Public Licence (Free/ Open Source Software)
- Source: Stallman, R. M. (2002). Why Software Should Not Have Owners. Free Software, Free Society: Selected Essays of Richard M. Stallman. J. Gay, GNU Press: 224.



+



= GPLv
3

Differences at a glance

Creative Commons

- It is Lawyer and Academic driven
- It follows a hands-off approach
 - It focuses on supporting the transaction (contracts)
 - It does not own any IPR on the product
- It is based on formal hosting institutions
- Different licences for different jurisdictions
- Licenses content

Free Software Foundation

- It is Engineer and practitioner driven
- It follows a hands-on approach
 - It focuses on supporting the production of the content (software)
 - It owns IPR
- It is based on informal volunteers
- One licence for all jurisdictions and a set of standards
- Licenses mainly software

Not all the material produced is of the same kind

Regulatory Artifacts

Information Intensive artifacts

“Cultural reference” works

Technical Standards

Remixes

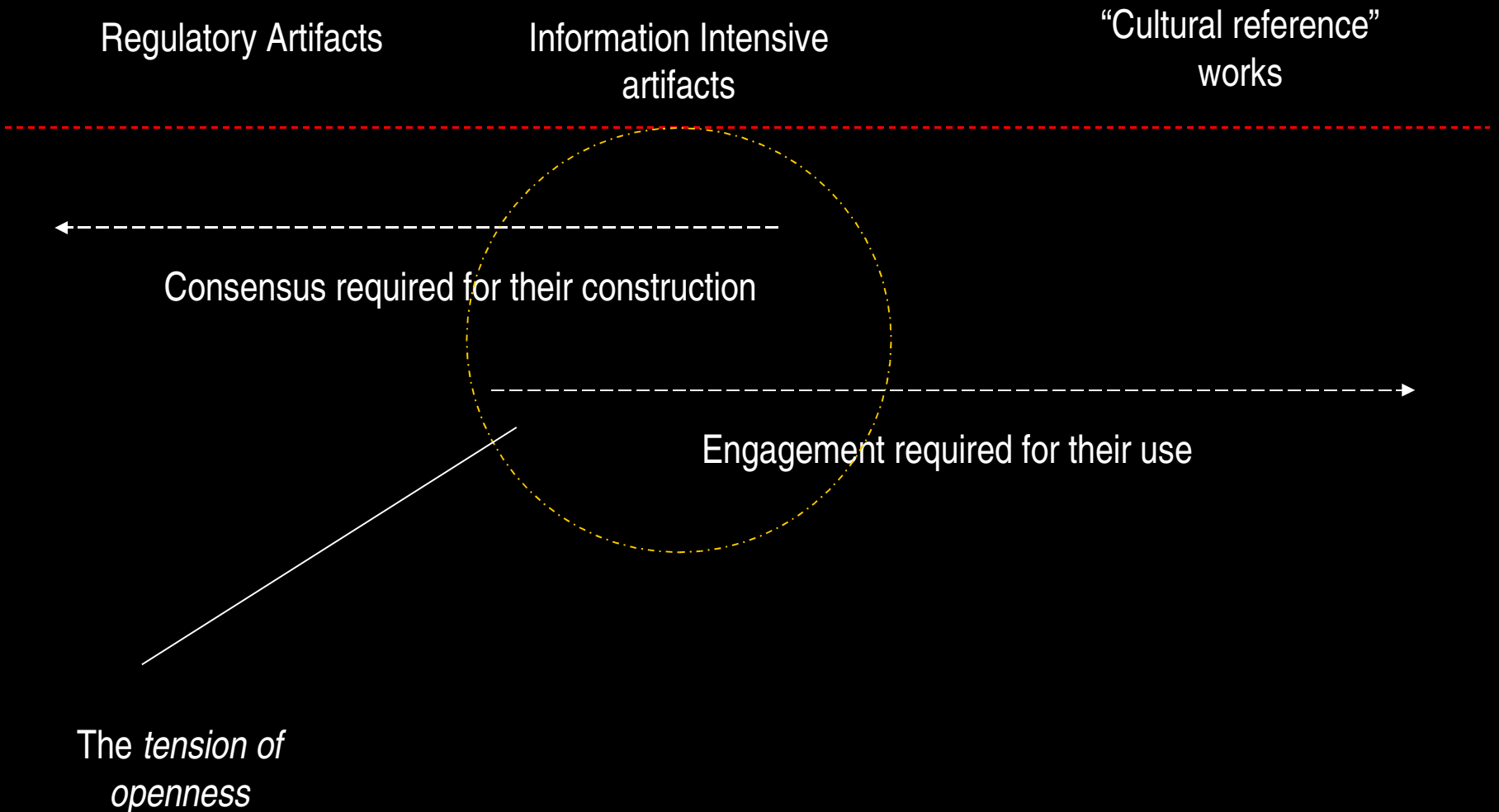
Conventional artwork

Legal instruments

Databases/
Encyclopedias

[Internet released]
software

A rule of the thumb for openness



Relationship between openness and the innovation – conservation dipole

The more regulatory characteristics an artifact has, the more it needs to maximize the links with the network of other elements, human and non-human. Hence, openness is required at least in the initial stages of its conception and construction. Conservation will occur after a point through the re-iteration of the links.

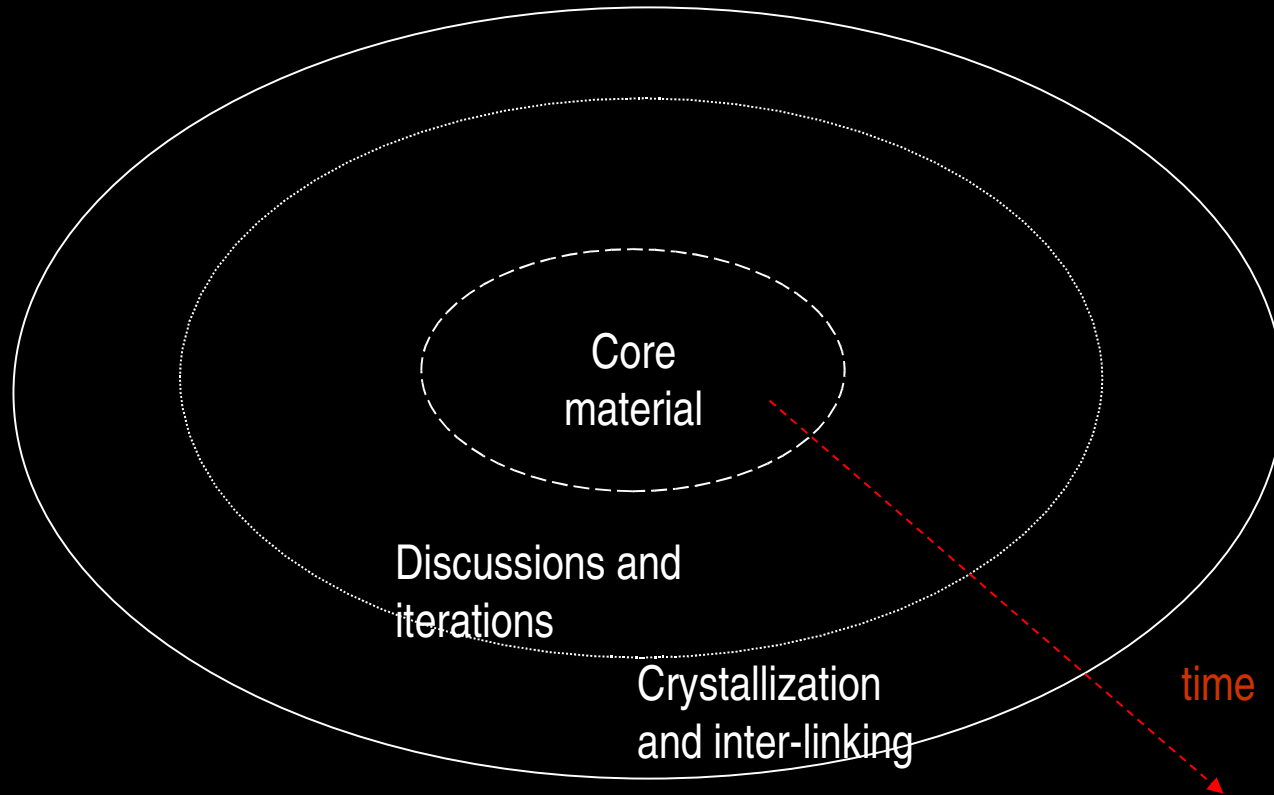
E.g. Process of developing the Creative Commons Licences and the Gnutella protocol

Info-intensive Artifacts

The more cultural characteristics an artifact has the more it needs to make reference to other cultural elements. The participation happens not through the creation of the artifact *per se* but through the co-definition of its use. Conservation occurs through the ritual of use.

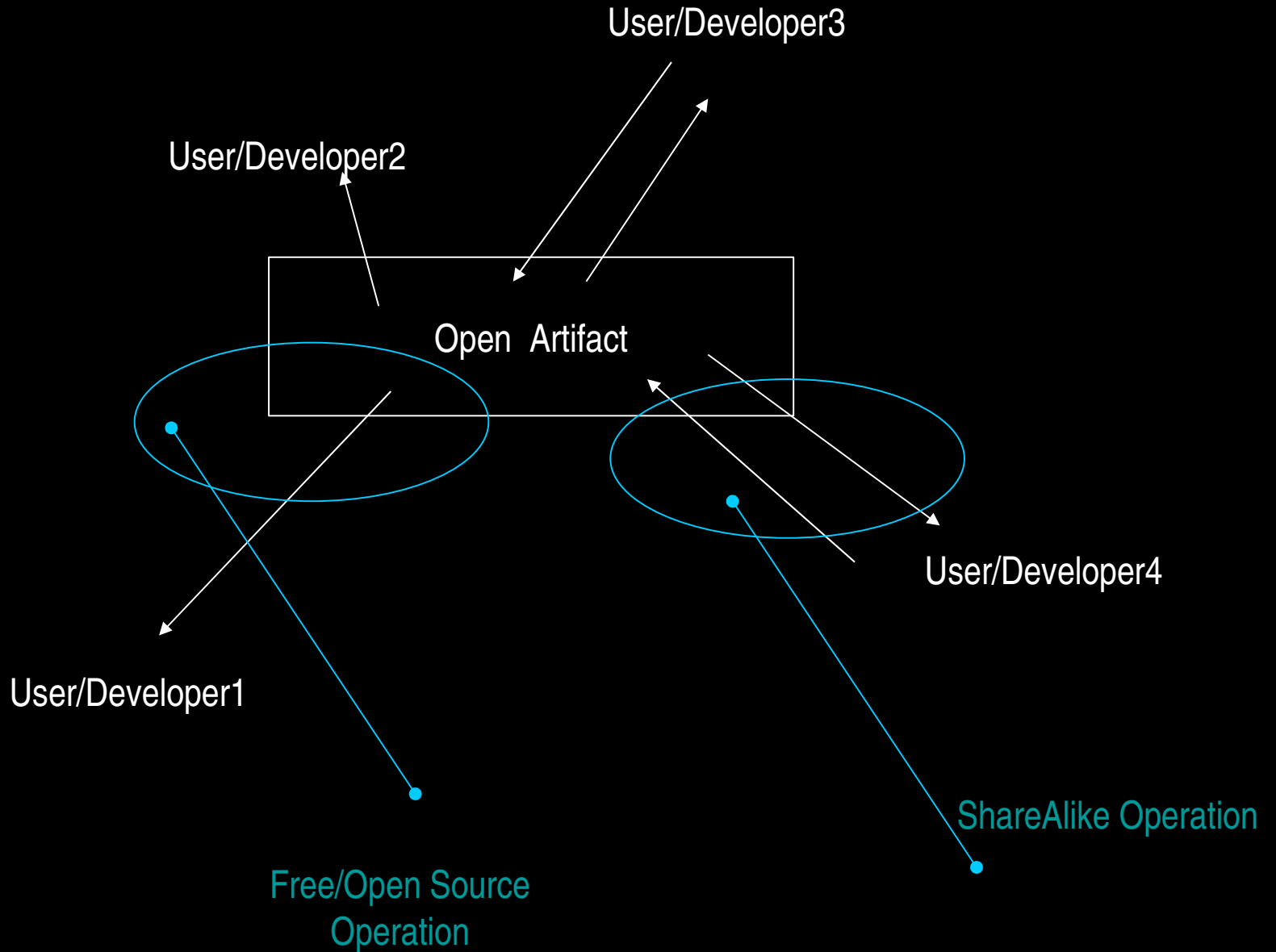
Process of using a music track or developing a graphic user interface

The cultivation phenomenon

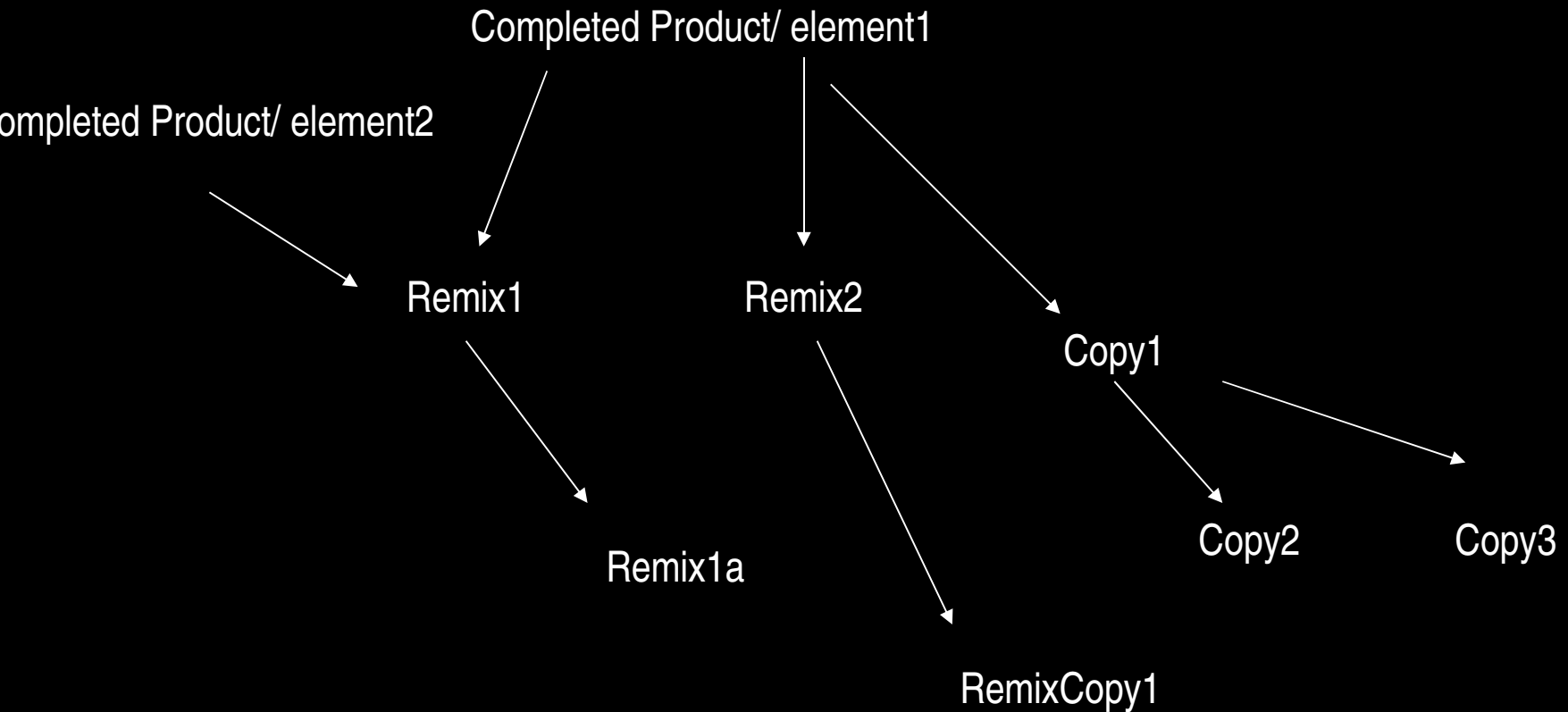


Openness is pushed to the edges and conservation to the core as the process develops

GPL model: Information Intensive



A CC trajectory: the cooking metaphor*



John Buckman, Founder of Magnatune: “there is only a limited amount of times you can mix food ingredients together before you end up with something disgusting ”

Of Nests, libraries and stores

Community of developers building

Loose/ Hybrid communities

Community of users building

- It is not necessarily a matter of licensing as it is one of the type of material:
 - Incomplete/ Open material developed in “*nests*” like Sourceforge (GPL) or CCmixter/ RemixReading (CC)
 - Completed or elements material may be found in “*libraries*”, where people use them in order to develop further material: Docs4u, BBC Creative Archive (partially also CCmixter)
 - Completed material is downloaded for use by stores or repositories like Magnatune or the Internet Archive

Some early conclusions

- Transparency may be increased through allowing participation in the negotiation phase or the constructions of all regulatory artifacts
- Openness does not remain static over time but tends to decrease as the project stabilizes
- The type of developed material influences the boundaries of participation:
 - non expert content
 - there are different workflows even when the licences have the same features
- Depending on the type of the supporting infrastructure, different types of participation are developed:
 - developers that talk to each other: talkative bees
 - developers/ users of elements that do not talk to each other: lonely bees
 - users that talk to each other: talkative leechers
 - users that don't talk to each other: lonely leechers

Types of participants

Communication

High

Low

High

talkative bee

lonely bee

Contribution

Low

talkative leecher

lonely leecher

	High	Low
High	talkative bee	lonely bee
Low	talkative leecher	lonely leecher

Where next?

[7]

Ecologies of
Regulation

Ecologies



A Definition

“**Ecology**, or ecological science, is the study of the distribution and abundance of living **organisms** and how these properties are affected by **interactions** between the **organisms** and their **environment**. The environment of an organism includes both the physical properties, which can be described as the sum of local abiotic factors like climate and geology, as well as the other organisms that share its habitat. “

Source: Wikipedia en.wikipedia.org/wiki/Ecology

Ecologies

People

Interactions

Tensions

Environment

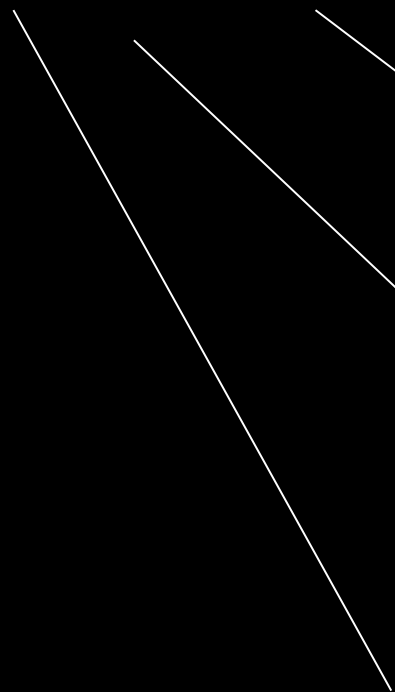
Complexity

Possible to cultivate NOT engineer

Interdependence

Engagement

Elements to be taken into consideration



Remember

The product is not a licence; it is rather the *community*
debating about the *licence*

Remember

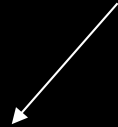
The product is not a licence; it is rather the *community*
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Remember

The product is not a licence; it is rather the *community*
debating about the licence

A CC cultivation model

Identify an area of interest



Suggest a particular issue or a project



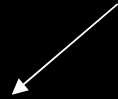
Have an unfinished document, policy, artifact for further elaboration



Identify tensions



Moderate the discussion with comments/
materials



Engage the stakeholders



Identify related issues/ link with familiar
concepts



Use an institutional basis

A CC cultivation model

Identify an area of interest

Suggest a particular issue or a project

Have an unfinished document, policy, artifact for further elaboration

Identify tensions

Moderate the discussion with comments/ materials

Engage the stakeholders

Identify related issues/ link with familiar concepts

Use an institutional basis

Education

How can European Schoolteachers share material/ the EUN project

Build the Licensing, technical and organizational model for EUN

Commercial vs. non Commercial interests

Live Meetings in BECTA/ EUN

Participate in the public events

The CCmixter, Pix'nMix, Docs4U projects/ what's next? The Learning Resources Exchange Project

Oxford/ The London School of Economics

Copyright means many things to many people



- CC is about remixing culture as it is about remixing ideas
- CC needs to learn from the FLOSS communities and practice
- CC is about creating an alternative regulatory space
- CC is about people not about licences

Contact

Prodromos Tsiavos:
p.tsiavos@lse.ac.uk



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