

# Re-use Licenses: Commercial or Non Commercial, This is the Question!

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In my first post, I promised to give some thought on the issue of the different options available to a public administration which intends to enable access to public sector information. Let us take a specific example; and one which links to the idea that we should give priority to exploring what happens at the local, rather than national level. Everybody knows what treasuries of art and culture may be found in most Italian towns. It may happen that a Region or municipality may provide funding to digitize images and texts it holds in some of its museum archives and libraries. Here I think about Sicily, which, I am told, unveiled late in April an initiative exactly in this field. Now, we are talking here only of works which are out of copyright. So, if for a moment we leave out intellectual property right which may be generated during the digitization process, to which I will come in the next blog, we are dealing with content which basically is free.

The question may arise: what is the optimal license which the local administration may choose to release this content?

In this regard, we might start to consider that a wise local administrator may have in mind an approach which intuitively leads her or him to discard the possibility of authorizing commercial re-use of this kind of content. The idea behind this initial reaction might be as follows. Public money has been spent on digitization of content; now, all is fine and well if digitized content is disseminated as widely as possible to enable study, research, entertainment and the like. But enabling these goals is clearly possible even if the authorization to access and re-use is limited to non commercial uses. Conversely, it might be argued, it does not make sense that content digitized with taxpayers' money is appropriated by profit making entities to build on it a proprietary product and service and sell on the market goods and services based on it.

This line of argument is plausible at first glance, but probably misguided if we stop to think a bit further and this on at least two accounts.

First, we should consider the concept of chain of authorizations. Non profit institutions, like Wikipedia and other aggregators of information and cultural content, undoubtedly contribute a great deal to the dissemination of knowledge, information, culture. However, they do so because the content they make available is accessible downstream without restrictions; the reason of the great success of Wikipedia and the like organizations is that they make anything they put together available to anybody without strings attached. To do so, however, Wikipedia has to make sure the content it incorporates is totally free to begin with; the flipside of the coin is that Wikipedia cannot incorporate content which would otherwise be splendid in complementing or illustrating its store of knowledge because it comes with restrictions. Now, if the Sicilian digital content was made available only for non-commercial re-uses, Wikipedia could not incorporate it, because the content would carry strings attached which are incompatible with Wikipedia's modus operandi.

Second, we should consider that, once digitization costs are incurred, it does not make any difference whether the re-user makes a profit from re-use. No marginal cost is incurred because there is an additional re-user. If he or she is smart enough to create a business model which enables her or him to combine this input with other inputs and make money out this, nice for him. Nothing is taken away from the public.

Of course, there would be a disadvantage to the public if the re-user is able to obtain monopoly or

even market power through the use of digitized content created by public funds. This may indeed happen in a number of ways. This unwanted outcome would result if content digitized by public money were made available on terms of exclusivity. But this is a good reason to avoid exclusivity, not commercial use. It is also possible that the re-user combines publicly funded digitized content with proprietary content; and secures a dominant position on the strength of the combination of the two complementary items. Economists would suggest that, if this is the case, there would be an incentive for new entrants to create and offer competitive complementary content; that is, if the publicly funded content is made available to all comers, without exclusivity. Of course, it may also happen that the “powerful” re-user controls so many important complementary assets, that the chances of a competitive challenge are slim. This is a possibility; but it is arguable that this occurrence is an externality which should be taken care by regulation, e.g. by means of antitrust enforcement or by application of the so called doctrine of essential facilities. Indeed, if publicly digitized material were made available only on the condition that it is used non commercially, it might happen that this restriction is more detrimental to firms intending to enter the market than to an entrenched business leader.

Admittedly, this is a very tentative line of reasoning. However, we are in a situation where a large enough number of licenses for public sector information have been adopted and used. So the time has come to do some empirical research on what is done; and some theoretical hypothesis on what may constitute best practice. At this stage, we should start to ask whether licenses restricting re-use to non commercial uses are superior. Maybe the line of reasoning I tried to sketch out can be a starting point.