

CODE OF BEST PRACTICES IN FAIR USE FOR SOFTWARE PRESERVATION: WEBINAR SERIES

Episode 4: Working with Source Code and Licenses

Welcome!

- **Episode 4** of a 7-part series on the *Code of Best Practices* and Other Legal Tools for Software Preservation
- Every episode is **recorded** and will be freely available online for future viewing
- Today: **Working with Source Code and Licensed Software**, with guests Daina Bouquin (Harvard/Smithsonian) and Lauren Work (UVA)

Housekeeping

- Audience is **muted** (audio and video) to preserve bandwidth
- Please **ask questions** by typing them into the chat window
- We will **hold** most questions until the end of the presentation; time has been reserved for Q&A

Roadmap

- Overview of Principle 5 and Software Licensing
- Experiences in the Field
 - Daina on source code at the Center for Astrophysics
 - Lauren on licensed software at UVA
- Discussion
- Q&A

Situation/Principle 5:

Working with Source Code

```
/**
 * Simple HelloButton() method.
 * @version 1.0
 * @author john doe <doe.j@example.com>
 */
HelloButton()
{
    JButton hello = new JButton( "Hello, wor
    hello.addActionListener( new HelloBtnList

    // use the JFrame type until support for t
    // new component is finished
    JFrame frame = new JFrame( "Hello Button"
    Container pane = frame.getContentPane();
    pane.add( hello );
    frame.pack();
    frame.show();           // display the fra
}
```

Limitations

- a. Restrictions expressed in donor agreements should be strictly observed. Where the donor was the author or publisher, the agreement provides especially critical information about their wishes for future access and use.
- b. In most cases, source code should not be made available to the general public online, and access should be treated similarly to requests for unpublished manuscripts.
- c. As appropriate, researchers' access to proprietary content not related to the research inquiry should be limited, by redaction or otherwise.
- d. As reasonably possible, attribution of authorship and ownership should be provided along with any files made available.

Fair Use and Licensing: Concerns

Software has been distributed on a licensing model for many years. This model leads to a general anxiety about fair use, expressed in a variety of ways:

- “I can’t do fair use if I don’t own the software; I just license it.”
- “The software license tells me everything I can and can’t do; doesn’t that trump fair use?”
- “I am not even a licensee of the software; I just got a physical copy in a gift from a donor. How can I use it without a license, much less make fair use?”
- “I don’t know what the original software license said, so I should assume the worst.”

Fair Use and Licenses: Big Picture

Two independent sources of authorization for any use:

- License is authorization from a copyright holder
- Fair use is authorization from the law

Licensors can't unilaterally cancel fair use rights, BUT

Licensees can make a specific promise, as part of a license, not to exercise their fair use rights

Reasons for Optimism

- Clear, express bars on preservation activities, or even on fair use in general, seem to be very, very rare
- More commonly, licenses describe only the scope of authorization provided for in the license
- Fair use is a 1A right, so courts will likely construe licenses to preserve it.
- On Privity (and lack thereof)
- Damages for breach of contract (the license!) are compensatory -- so the stakes dramatically lower

Astronomy source code

- Legacy proprietary code (still needed)
 - [IDL Astronomy Library](#)
- Evolving code (wildcard)
 - [PyDL](#)
- Open code (attribution/documentation issues)
 - [AstroPy](#)
 - [SunPy](#)

Dependency chains - external data/computing resources/code libraries; often parts of pipelines.

Commercial CAD/BIM software

- Part of [FCOP project](#) at UVa: “Emulation in the Archives”
- Project scope & relation to software licenses

EMULATION IN THE ARCHIVES

Questions?

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More information
arl.org/fairuse
cmsimpact.org/software
wcl.american.edu/bestpractices