View metadata, citation and similar papers at core.ac.uk

brought to you by CORE

provided by Archive Ouverte a LUniversite Lyon 2

Alternative policies for alternative Internets

Melanie Dulong de Rosnay

To cite this version:

Melanie Dulong de Rosnay. Alternative policies for alternative Internets. Journal of Peer Production, 2016, <http://peerproduction.net/issues/issue-9-alternative-internets/experimental-format/alternative-policies-for-alternative-internets/>. <halshs-01362482>

HAL Id: halshs-01362482

https://halshs.archives-ouvertes.fr/halshs-01362482

Submitted on 8 Sep 2016

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

Distributed under a Creative Commons Attribution 4.0 International License

JOURNAL OF PEER PRODUCTION

NEW PERSPECTIVES ON THE IMPLICATIONS OF PEER PRODUCTION FOR SOCIAL CHANGE

ALTERNATIVE POLICIES FOR ALTERNATIVE INTERNETS

By ***Melanie Dulong de Rosnay***

The Internet (alternative) Barnstar

INTRODUCTION

Online services' Terms of Use (ToU) or End-user Licence Agreements (EULA) are often unfair, abusive and hard to read for users. They are also difficult to draft for alternative projects willing to develop fair and clear policies for their contributors. This piece provides examples of original and alternative clauses, containing fair and unfair terms, addressing some of the most common issues faced by online platforms when developing their legal policies regarding ownership of user-generated content, protection of personal data, liability for third-party content, and other legal questions affecting users' or consumers' rights and their enforcement.

While specific model clauses can't be drafted to fit a plurality of activities without knowing the details of the platforms' features and setting, projects and values, this piece provides guidelines and practical information to communities aiming for a wide-reaching, easy to understand licence, to empower informed choices prior to the definition of policies reflecting a variety of alternative politics that may be embraced by alternative internet platforms. Alternatives can be defined as the "range of (media) projects, intervention and networks that work against, or seek to develop different forms of, the dominant, expected (and broadly accepted) way of 'doing' (media)" (Atton, 2004).

Commons-based and privacy-enhancing or peer-to-peer services, as alternative to commercial services where users relinquish most of their rights, also need alternative policies in order not to deprive their users of their rights.

Therefore, this contribution is intended to provide a practical, critical and normative contribution by proposing guidelines for platform developers drafting their terms of use. As a practical resource, it lists most clauses that are to be included in online terms of use. The objective to enclose a range of examples from the most abusive to the fairest for most of the topics aims at exemplifying worst as well as best practices. The definition of fair clauses is meant to implement the vision of platforms which respects users' rights. My legal approach is grounded in commons-based peer production theory and practice from a continental European legal culture perspective, with the assumption that alternative internets have political concerns for freedom, autonomy, consent, privacy, independence, surveillance, asymmetries of power, security, unfair contractual and commercial practices and other fundamental rights. Neither universal nor exhaustive, and rather than legal advise, the purpose is to raise awareness on the possibility to draft alternative terms of use, in a context dominated by US corporate legal culture aiming at maximising profit and minimising risks (Google, Amazon, Facebook and Apple). Instead of embracing a neoliberal agenda, alternative policies may rather try to support the development of sustainable services and products, seen as commons. Most Terms of Use show a diverse mix of all criteria and choices, and there are no caricatural pure evil commercial models or universally desirable commons-based alternatives, unilaterally advantaging or disadvantaging users at all levels. Finally, it follows the European Directive on unfair contract terms according to which contracts should be drafted in plain, intelligible language, which do not preclude validity and non-ambiguity.

Targeted platforms are hosting user-generated and third-parties content (text, media, data), structuring the work of local or online communities (cooperatives, social movements, non-profit organisations) or developing alternatives to commercial services (peer-to-peer

communication in the broad sense, social networks, community wireless networks, storage, search engines, other software, online or offline products or services). Alternative platforms are in a position of embedding political choices when selecting and developing their techno-legal infrastructure. To certain degrees, they may or may not take ownership of the work developed by their contributors; they may or may not facilitate others to reuse or profit from it; they may or may not be collecting and further disclosing personal data, either voluntarily provided or left unintentionally by users; they may or may not offer warranties on their product or service.

The clauses presented below have been chosen for their representativeness and educational potential to draw attention on the need for streamlined alternative policies to support alternative internets. They are structured according to three thematics gathering most common legal questions for online platforms: (1) copyright, (2) consumer protection and enforcement, (3) data protection. I start with existing clauses to illustrate standard abusive practices observed in commercial, mainstream Terms of Use. They are followed by counter-examples of fair clauses, embedding alternative political values, coming from real platforms. Examples on the first cluster, copyright for user-generated content, are more numerous and detailed, because of my personal expertise and preference as a licence geek, and also because more alternatives have been developed and successfully implemented (GNU-GPL, Creative Commons) in that area than cousin projects from the data protection and consumer protection perspectives (Mozilla Privacy Icons project).

COPYRIGHT

Content can be pre-existing works created by others and edited, uploaded or transferred by platforms' contributing authors, or original content created by them. Content can be either made accessible for registered users, for the public, or made available also for further reuse. Copyright clauses will help the platform to get the rights to distribute works and data created and/or uploaded by contributors and made available to end-users. Contributing authors and end-users (the same person can fulfill both roles or at different stages of the content life-cycle) are typically addressed by the pronoun "you".

Ownership of user-generated content

Some platforms claim all rights on your content

Twitpic authorises partners to reuse users' content and takes credit for their work: Twitpic entered into commercial agreements with partners such as media agencies, allowing them to use contributors' content without giving them credit. Twitpic's partners "are required to […] attribute credit to Twitpic as the source." – https://tosdr.org/#twitpic

Apple takes ownership of ideas submitted by users: Terms of idea submission "You agree that: (1) your submissions and their contents will automatically become the property of Apple, without any compensation to you." – http://www.apple.com/legal/intellectual-property/policies/ideas.html

500px Store doesn't respect users' moral rights: Authorship – "You hereby irrevocably waive all moral rights in your Store Images."

These clauses are so abusive it is doubtful they are legal in countries with strong moral and consumers rights.

Some platforms claims more rights than they need to distribute user-generated content

With **Spotify**, "You grant perpetual license to anything you publish."

Another very broad copyright license on your content "includes the right for **Facebook** to transfer the license or to license it others on their terms ("sublicense"). Also, the copyright license does not end when you stop using the service unless your content has been deleted by everyone else." – https://tosdr.org/#facebook

Platforms can think about the amount of rights needed to perform their service, and try not to ask for more rights than they actually need.

Some platforms adopt a neutral copyright policy

"You only grant to **SoundCloud** the rights necessary to operate the services."

"You don't grant any copyright license to **Cloudant**".

A non-exclusive license can also allow a platform to further distribute content.

Some platforms adopt open licensing

Different modalities exist for a platform to implement open licensing. A full transfer of copyright to the platform is not necessary. Terms of Use may ask the contributor to release their contributions to the public under a specific license. Creative Commons are standard for open content licensing, including metadata (machine-readable version of the license). This section presents options loosely structured from the most liberal to the less open license, followed by more specific models. When choosing licenses they will suggest or impose to their contributors to distribute the user-generated content, platforms should be mindful of *incompatibilities* among open licenses as some do not

facilitate reuse and remix.

With the Public Domain Dedication, authors do not claim rights and users are free to use their work or database. This tool is frequently used by public institutions, libraries and museums on their catalogue metadata.

With the Public Domain Mark, users acknowledge that they display works which are already in the public domain and that they do not claim additional rights.

British Library: Terms of Use – "Public Domain content": The Content on the site marked "Public Domain" consists of Content from the British Library's collections, which the Library believes are in the public domain in most territories. Content marked "Public Domain" indicates that the Library is unaware of any current copyright restrictions on the Content either because: (i) the term of copyright has expired in most countries or: (ii) no evidence has been found that copyright restrictions apply." – http://www.bl.uk/aboutus/terms/copyright/

British Library uses the Public Domain Mark for some of their collections, and add some social norms requirements based on good will: "Please respect the creators – ensure traditional cultural expressions and all ethical concerns in the use of the material are considered, and any information relating to the creator is clear and accurate. Please note, any adaptations made to an image should not be attributed to the original creator and should not be derogatory to the originating cultures or communities.
* Please credit the source of the material – providing a link back to the image on the British Library's website will encourage others to explore and use the collections.
* Please share knowledge where possible – please annotate, tag and share derivative works with others as well as the Library wherever possible.
* Support the Public Domain – users of public domain works are asked to support the efforts of the Library to care for, preserve, digitise and make public domain works available. This support could include monetary contributions or work in kind, particularly when the work is being used for commercial or other for-profit purposes.
* Please preserve all public domain marks and notices attached to the works – this will notify other users that the images are free from copyright restrictions and encourage greater use of the collection." https://www.bl.uk/catalogues/illuminatedmanuscripts/reuse.asp

The **Rijksmuseum** proposes downloadable versions of public domain works for reuse (you have to sign in, though, thus entering personal data). https://www.rijksmuseum.nl/en/collection/SK-A-2344

"All metadata available on europeana.eu are published free of restrictions, under the terms of the Creative Commons CC0 1.0 Universal Public Domain Dedication. However if you re-use data published by **Europeana**, we encourage you to follow the Europeana Usage Guidelines for Metadata and to provide attribution to the data sources whenever possible."

Flickr lets users choose a copyright license among the six Creative Commons licences and the two public domain tools: https://www.flickr.com/creativecommons/. With Flickr, "You can specify whether or not you want your photos to be accessible to the public, accessible to a select few, or private."

Creative Commons Attribution is the most open option.

Identi.ca: "You grant all readers the right to use, re-use, modify and/or re-distribute the Content under the terms of the Creative Commons Attribution 3.0."

Wikipedia chose copyleft to ensure derivative works will stay in the commons: "You agree to the following licensing requirements: 1. Text to which you hold the copyright: When you submit text to which you hold the copyright, you agree to license it under: Creative Commons Attribution-ShareAlike 3.0 Unported License ("CC BY-SA"), and GNU Free Documentation License ("GFDL") (unversioned, with no invariant sections, front-cover texts, or back-cover texts)." – https://wikimediafoundation.org/wiki/Terms_of_Use

Non-Commercial and No-Derivatives options are more restrictive for subsequent users, but may be suitable for your or your contributors' needs.

Minecraft has a Commercial Rights Reserved policy while allowing derivatives, or mods: "You must not: give copies of our Game to anyone else; make commercial use of anything we've made; try to make money from anything we've made; or let other people get access to anything we've made in a way that is unfair or unreasonable. Modifications to the Game ('Mods') (including pre-run Mods and in-memory Mods) and plugins for the Game also belong to you and you can do whatever you want with them, as long as you don't sell them for money / try to make money from them."

The Conversation: Academic news are licensed under a Creative Commons —Attribution/No derivatives, technically allowing commercial use although the conditions also state that "It's OK to put our articles on pages with ads, but you can't sell our material separately", leading to uncertainty. https://theconversation.com/us/republishing-guidelines

Le Louvre (unlike to the Rijksmuseum and the British Library presented above) claims additional rights on public domain works for their photographers. Conditions for Use of Images: "The iconographic and photographic reproductions of works presented on the site with a signature or a © are protected under intellectual property law. Photographs credited © Musée du Louvre / [etc.] are the exclusive property of the Musée du Louvre and are used by the Musée du Louvre with the permission of their authors or rightsholders. Photographs credited © RMN, Musée du Louvre / [etc.] are the property of the RMN. Non-commercial re-use is authorized, provided the source and author are acknowledged." – http://www.louvre.fr/en/conditions-use-images

This scope of licensing was organized from the most liberal to the most restrictive in terms of rights granted to end-users on the content they host. The following Infobox explains how a platform may implement a copyright open license.

Guidelines to license, include metadata and attribution information

– Include a licence directly in your terms of use, or propose to select a licence either in the registration or the upload process in order to collect informed consent from your contributors to release their work on your platform under an open license.

– At least write a sentence to inform users and visitors: Make sure to indicate the full name of the licence including options, version and jurisdiction and link to the licence:

Good: this work is licensed under a CC Attribution 3.0 Spain licence available at http://creativecommons.org/licenses/by/3.0/es/.

Also good: Except where otherwise noted, content on this site is licensed under a Creative Commons Attribution 4.0 International licence.

Not good: this work is licensed under a CC Attribution licence.

Worse: ~~this work is licensed under creative commons.~~

If you include the CC logo, don't just paste the image, insert the hyperlink inside of the image (in Word or Office: Insert Hyperlink) so that end-users can click on it when browsing on the image:

– It is better if you can also include attribution metadata in each file:

The easiest way to include attribution metadata is to fill the form with title, author, etc in the form to select your licence: http://creativecommons.org/choose/

Some licenses, while making a serious point, are sweet and funny statements

Nina Paley, an artist and a free culture activist, wrote and uses **The Copyheart Manifesto**. "♡ Copying is an act of love. Please copy and share." http://copyheart.org/manifesto/

Do What the Fuck You Want to Public Digital License: "So, there is anything you can't do, as long as the result stays digital. Really anything! But as soon, as you go physical – print, burn as a cd, etc – you need to talk to the author first." http://wtfpdl.net/about.html

Don't be a dick public license: "As developers we all want to protect our code from dicks that try to steal, sell, infringe or just generally rip us off. For this we have licenses like GPL, MIT, etc. Being a dick includes – but is not limited to – the following instances: 1a. Outright copyright infringement – Don't just copy this and change the name. 1b. Selling the unmodified original with no work done what-so-ever, that's REALLY being a dick. 1c. Modifying the original work to contain hidden harmful content. That would make you a PROPER dick." http://www.dbad-license.org/

While technically valid, these statements are not very detailed, unlike Creative Commons licenses that have been tested in courts in jurisdictions such as Spain, the Netherlands, Israël and Belgium.

Some platforms have specific needs that are not covered by standard open licenses

More seriously, to go beyond copyleft, look if reciprocity licences have been developed since this piece was published. They intend to have more granular distinctions than Share Alike and Non Commercial.

Community Wireless Networks have the Pico Peering Agreement: http://www.picopeer.net/PPA-en.html under which "Peer do not grant any license to the platform". In that case, peers designate the users, the commoners that contribute to the service.

Open Hardware communities developed specific licences: http://www.ohwr.org/projects/cernohl/wiki and https://www.tapr.org/ohl.html

The two latter cases are examples of platforms that are not offering user-generated content, and have therefore more specific needs than the licenses above, which deal with copyrightable content. Platforms providing a non-copyrightable product (connectivity or open hardware) have more specific needs to tailor the rights offered to the nature of their activity or the product or service they intend to share or develop (housing, food, biodiversity, etc).

Miscellaneous

Copyright on your infrastructure

Your platforms can be licensed under a free software licence, or not.

For software code and documentation, see https://www.gnu.org/licenses/licenses.en.html.

Code licences are summarised here: https://tldrlegal.com/licenses/browse.

Copyright on the text of your policy

If you want to allow other projects to reuse part or all of your terms of use as platform owner, don't forget to specifically include them in your copyright policy!

According to the Creative Commons policy, Creative Commons makes the legal code of its licenses and the CC0 Public Domain Dedication available under the CC0 Public Domain Dedication.

Logo, name, and brand of your platform: Trademark policy

Others may copy and reuse them, or not.

Python License, Version 2 (Python-2.0)

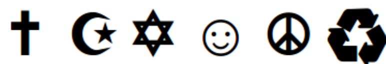
This License Agreement does not grant permission to use CNRI (Corporation for National Research Initiatives) trademarks or trade name in a trademark sense to endorse or promote products or services of Licensee, or any third party.

Creative Commons Trademark Policy

"You are not authorised to use any modified versions of our trademarks (…)"

Is the ♡Copyheart trademarked?

No. It's just a statement of intention. Its effectiveness depends only on how people use it, not on state enforcement. Here are are some other symbols that aren't trademarked, but whose meanings and intentions are widely (if imperfectly) understood:



Transfer of third-party content

Contributors may also be uploading works and data created by third parties, in addition to their own works. The risk for the platform is to redistribute infringement, and face third party claims.

Some platforms' terms of use foresee damages for users who would upload infringing content.

"You agree to indemnify **Twitpic** and its employees from any claim made by any third party related to your content. That includes paying reasonable attorneys' fees."

"You shall defend **GitHub** against any claim, demand, suit or proceeding made or brought against GitHub by a third party alleging that Your Content, or Your use of the Service in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law."

Minecraft: "Any content you make available on our Game must also be your creation. You must not make any content available, using the Game, that infringes the rights of anyone else. If you post content on our Game, and we get challenged, threatened or sued by someone because the content infringes that persons rights, we may hold you responsible and that means you may have to pay us back for any damage we suffer as a result. Therefore it is really important that you only make content available that you have created and you don't do so with any content created by anyone else."

Most platforms simply do not warrant that the content they distribute does not contain copyright infringement, leaving end-users in uncertainty on the reusability of the content they distribute.

The **British Library** "does not warrant that the sharing of Content, including Public Domain or Creative Commons content will not infringe upon the rights of third parties. It is your responsibility to determine and satisfy copyright and other use conditions before copying, transmitting, or making other use of the Content."

This follows **Creative Commons licences** standard disclaimer and waiver of all liability by the licensor, including non-infringement: Human-readable summary: "No warranties are given. The license may not give you all of the permissions necessary for your intended use."

Some platforms try to hold their users responsible

SugarCRM Public License v1.1.3 (SugarCRM-1.1.3): Third Party Claims. If Contributor has knowledge that a license under a third party's intellectual property rights is required to exercise the rights granted by such Contributor under Sections 2.1 or 2.2, Contributor must include a

text file with the Source Code distribution titled 'LEGAL' which describes the claim and the party making the claim in sufficient detail that a recipient will know whom to contact.

Dropbox: "Content in the Services may be protected by others' intellectual property rights. Please don't copy, upload, download or share content unless you have the right to do so."

Cloudant: "You must own or have rights to the data you store."

Some platforms ask explicitly users to warrant they own all rights on the content they upload, thus securing further reuse by others, and building a sustainable commons.

Digital Public Library of America: "You represent and warrant that you have all rights necessary to upload the User Content, to the Website and to grant the rights granted by you to DPLA and other Users pursuant to these Terms of Service."

Creative Commons 1.0 version (and some European 2.0 versions, but none of the following, currently in use, versions) was following that trend (see Dulong de Rosnay, 2013): "CC 1.0 By offering the Work for public release under this License, Licensor represents and warrants that, to the best of Licensor's knowledge after reasonable inquiry: Licensor has secured all rights in the Work necessary to grant the license rights hereunder and to permit the lawful exercise of the rights granted hereunder without You having any obligation to pay any royalties, compulsory license fees, residuals or any other payments; The Work does not infringe the copyright, trademark, publicity rights, common law rights or any other right of any third party or constitute defamation, invasion of privacy or other tortious injury to any third party."

To sum-up this section on third party rights, there are four options in the possible spectrum of clauses, from the most protective for the platform, to the most protective for the users.

CONSUMER PROTECTION AND TERMINATION OF CONTRACT

Guarantees: warranties and disclaimers on product and service

Representations and warranties, or in the contrary disclaimers of liability can be used for many problems, copyright infringement as presented in the previous section, but also defect, data integrity, data loss, damages, security or quality of service. Disclaimers of warranties and limitation of liability are the norm in commercial, public and community terms of use.

Creative Commons 4.0: The Licensor offers the Licensed Material as-is and as-available, and makes no representations or warranties of any kind concerning the Licensed Material, whether express, implied, statutory, or other. This includes, without limitation, warranties of title, merchantability, fitness for a particular purpose, non-infringement, absence of latent or other defects, accuracy, or the presence or absence of errors, whether or not known or discoverable.

With **Pico Peering Agreement v1.0**, "There is no guaranteed level of service" – http://www.picopeer.net/PPA-en.html

Spotify gives no guarantee of quality of service while maintaining the payment while Cloudant will offer a refund of the applicable fee if availability is less than 95%.

Platforms should be aware that unlike standard practices in most terms of use, disclaiming responsibility for obtaining permission, offering, with an incitation to reuse, works whose rights are not all cleared. Disclaiming liability is not legal in all jurisdictions; consumer law offer a minimum of guarantees. As **Creative Commons 4.0** notes, "Where disclaimers of warranties are not allowed in full or in part, this disclaimer may not apply to You."

The **Don't Ask Me About It License** has a fun disclaimer "Copying and distribution of this file, with or without modification, are permitted in any medium provided you do not contact the author about the file or any problems you are having with the file. Do what you want, just don't contact the author." – https://tldrlegal.com/license/the-don%27t-ask-me-about-it-license

GNU GPL [22] and **GFDL** [23] licences do not have a clause on representation and warranties nor the express absence thereof. This solution of not addressing the question within the licence is meaning that decision and proof are left outside of the licence and would be a matter of court decision.

Cloudant "warns you if emergency maintenance is happening."

The level of quality of service promised can vary and starts from nothing.

Personal identity

"You must be able to legally sign a binding contract. You must use your real name to register" on **Cloudant**.

"You agree to provide your full legal name when you register to the service. It does not prevent you from using a pseudonym" on **Yahoo!**

"You must use your legal name publicly on the service." Using a pseudonym or a pen name is not allowed on **Facebook**.

Restrictive clauses in this matter may lead to involuntarily exclude some users, as for instance children and minor contributors are often not taken into account. Real name policy may not be required and anonymity or pseudonymity may therefore be authorised. The absence of a

clause will lead to tacit acceptation of all persons without requesting to disclose their identity.

Censorship

Contributors may post copyright infringing and suggestive content. Their account may or may not be deactivated and their data may be deleted for that (or even for no reason).

"**YouTube** can remove your content at any time and without prior notice."

Spotify can also delete your account without notice.

Apple iCloud "can delete any of your data (files, music, messages, etc.) at any time and without notice. All the data that you have on iCloud can be removed or modified by Apple if they think it is inappropriate or "objectionable" to them. It can be done automatically with pre-screen, and without prior notice to you. Section: "Removal of Content" (content means all your data on iCloud, from files to software and messages): "Apple reserves the right at all times to determine whether Content is appropriate and in compliance with this Agreement, and may pre-screen, move, refuse, modify and/or remove Content at any time, without prior notice and in its sole discretion, if such Content is found to be in violation of this Agreement or is otherwise objectionable." – https://tosdr.org/

"**GitHub**, in its sole discretion, has the right to suspend or terminate your account and refuse any and all current or future use of the Service, or any other GitHub service, for any reason at any time.

"In certain (hopefully unlikely) circumstances it may be necessary for either ourselves or the **Wikimedia** community or its members (as described in Section 10) to terminate part or all of our services, terminate these Terms of Use, block your account or access, or ban you as a user."

According to the **Code Project Open License (CPOL) 1.02**, "You agree not to use the Work for illegal, immoral or improper purposes, or on pages containing illegal, immoral or improper material."

"You agree never to publish reputation-damaging opinions about **Skype**. When signing up as a Skype user, you agree you will never publish a link to the Skype Website that damages their reputation."

Change of terms of use

Skype: "Terms may be changed any time at their discretion, without notice to the user"

Dropbox: "Terms may be changed at any time, but you will be notified."

"When **SoundCloud** decides to modify the terms of service, they notify you by email. The changes will go in application after 6 weeks, leaving a reasonable amount of time for you to consider whether you agree to the changes."

Wikipedia and **Facebook** allow community comments on proposed changes. Voting and vetoing is a plus.

Right to leave and data portability

Twitter and **Github** have a data export function. But "even if you de-activate your account or if your account is closed, **Twitter** still has all the rights on your Content (the copyright license survives termination)."

Cloudant "will provide an exported copy of your data in the event of termination."

Enforcement

Terms of Use traditionally choose a jurisdiction and applicable law, often in the place of incorporation of the service.

With some services, you waive your rights of legal action.

500px waiver of legal actions: "You shall not have any right to terminate the permissions granted herein, nor to seek, obtain, or enforce any injunctive or other equitable relief against 500px, all of which such rights are hereby expressly and irrevocably waived by you in favour of 500px."

Instagram: You waive your right to a class action.

Alternative dispute resolution mechanisms include arbitration of a tribunal of peers contributing to the service.

DATA PROTECTION

(all quotes from https://tosdr.org/)

Consent to data collection, record, use and transfer to third parties is obtained in privacy policies, offering variable levels of confidentiality and data protection to users. Often drafted with low standards of protection for users, they are far from complying with European regulation on personal data. Terms of use will not be sufficient to assess the level of data protection, also depending on encryption, software, architecture and protocols used. If services are not designed to track, store, mine nor monitor data, therefore, communications are more likely to be considered confidential.

Cookies, logs and tracking

Amazon "uses cookies to track you even if you are not interacting with them directly (…) to track your device and serve targeted advertisements on other websites."

Google "keeps your searches and other identifiable user information for an undefined period of time."

Facebook "uses, pixels and local storage in order to gather information about you, your device, your browser cache, your use of Facebook. Facebook also uses cookies for adversing purposes."

Twitter "does not require cookies for most of the service to function."

Sonic.net "will not keep User logs longer than two weeks."

Wikipedia "sets a temporary session cookie for not-logged-in users, which is deleted at the end of the browser's session."

Personal data retention, collection, processing, disclosure and transfer

Mozilla Privacy Icons working group identified the retention period and the third party use (which can include advertisers and law enforcement) as key provisions.

Google "keeps your searches and other identifiable user information for an undefined period of time (…) and can share your personal information with other parties."

With **Kolab Now**, "No third-parties access to your data without a duly authorized judicial Swiss warrant".

RapidShare "does not scan or open the files of its users."

DuckDuckGo "doesn't save your searches and doesn't send your searches to other sites. No personal information is saved either. No cookies are used by default, but cookies can be saved on your computer for some features (e.g. settings)."

Explaining how personal data is collected, stored and processed can be useful information for the users, as well as providing the technical possibility to opt-out and delete one's data, even if that can be difficult to prove.

CONCLUSION

While this piece gathers unfair clauses next to alternative, fair counter-examples, the final word belongs to citizen communities developing alternative internets: media, platforms, services or networks. Commons-based peer-production services also have the power to re-define terms of use and envision rights of contributors and users in a more respectful manner than the commercial services.

TINLA. [i] Be nice.

ACKNOWLEDGMENTS

The research to identify core terms of use was initiated as part of the ADAM interdisciplinary project on Distributed Architectures and Multiple Multimedia Applications supported by a grant from the French ANR (Agency for National Research). The author also thanks the two following very useful resources on Terms of Use which were used and quoted to write this paper:

– ToS;DR (Terms of Service; Didn't Read) rates websites policies according to users' rights and collaborates on TOSBack, a tracker of policy changes, with EFF and the Internet Society.

– TLDRLegal (Too Long, Didn't Read Legal) summarises the clauses of popular software licence and classifies them into three categories: what you can, cannot and must do.

The project to draft standard and fair terms of use has been further developed within P2Pvalue, a project of the Framework Programme FP7-ICT-2013-10 of the European Commission (Grant No.: 610961) when writing the terms of use of Teem, a platform for Commons-Based Peer Production. The mutual influence between alternative technologies and alternative policies has been influenced by the Alternet project funded by the CNRS Mission for Interdisciplinary Programme in Communication Sciences, and the understanding of what requires an alternative internet deepened in netCommons, a project of the European Commission H2020-ICT-2015 (proposal number: SEP-210267187).

Finally, the author thanks the reviewers and the editors for their useful suggestions to structure and improve the piece.

NOTES

[i] The terms of use of Teem (https://teem.works/index.php/fair-terms-of-use/), the P2Pvalue platform, have been co-drafted by the author. She structured them into two parts:
– Users obligations (e.g. use a Creative Commons license for copyright) under a first section entitled BE NICE
– Platforms obligation (e.g. respect privacy, offer free software) under a second section entitled WE TRY TO BE NICE

REFERENCES

Abruzzi, B. (2010) "Copyright, free expression, and the enforceability of 'personal use-only' and other use-restrictive online terms of use". Santa Clara Computer and High – Technology Law Journal 26(1): 85-140.

Aron, J. (2014) "Accept without reading?" New Scientist 224(2998): 24-24.

Atton, C. (2004) An Alternative Internet. Radical Media, Politics and Creativity. Edinburgh University Press.

Calloway, T. (2012) "Cloud computing, clickwrap agreements, and limitation on liability clauses: A perfect storm". Duke L. & Tech. Rev. 11: 163.

Christ, P. E. and Curtis A. Peele (2008) "Virtual worlds: Personal jurisdiction and click-wrap licenses". Intellectual Property & Technology Law Journal 20(1): 1-6. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, Official Journal L 095, 21/04/1993 P. 0029 – 0034.

Dulong de Rosnay, M. (2013) "Open Content Licenses Without Representation: Can You Give Away More Rights Than You Have?" European Journal of Law and Technology 4(3).

Frieden, Jonathan (2014) "Essential elements of effective terms of use". Journal of Internet Law 18(5): 3-10.

Gabriel, H. (2004) "Fear of the Unknown: The Need to Provide Special Procedural Protections in International Electronic Commerce". Loyola Law Review 50: 307.

Hartzog, W. (2010) "The New Price to Play: Are Passive Online Media Users Bound By Terms of Use?" Communication Law and Policy 15(4): 405-433.

Lemley, M. A. (2006) "Terms of use". Minnesota Law Review 91.

Livingston, J. (2011) "Invasion Contracts: The Privacy Implications of Terms of Use Agreements in the Online Social Media Setting". Albany Law Journal of Science & Technology 21(3): 591-637.

Murray A. (2005) "Contracting Electronically in the Shadow of the E-Commerce Directive", in L. Edwards (ed.) The New Legal Framework for E-Commerce in Europe. Oxford: Hart Publishing, Pp. 67-92.

Pike, G. (2004) "Shrink-wrap, click-wrap, now browse-wrap". Information Today 21(3): 15.

Riefa, C. and J. Hornle (2009) "The Changing Face of Electronic Consumer Contracts in the Twenty-first Century: Fit for Purpose?" in L. Edwards and C. Waelde (eds.) Law and the Internet. Oxford: Hart Publishing.

Rubin, A. and A. Delcheva (2014) "Internet Licensing". Licensing Journal 34(10): 29-31.

Sandeen, S. (2003) "The sense and nonsense of web site terms of use agreements". Hamline Law Review 26(3): 499-553.

Walden, M. (2001) "Could Fair Use Equal Breach of Contract: An Analysis of Informational Web Site User Agreements and Their Restrictive Copyright Provisions". Washington and Lee Law Review 58: 1625-1625.

Wauters, E., E. Lievens and P. Valcke (2014) "Towards a better protection of social media users: A legal perspective on the terms of use of social networking sites". International Journal of Law and Information Technology 22(3): 254-294.

Melanie Dulong de Rosnay is Associate Research Professor (Permanent researcher) at the French National Centre for Scientific Research (CNRS), Institute of Communication Sciences (CNRS – Paris Sorbonne University – UPMC)

Journal of Peer Production - ISSN: 2213-5316
All the contents of this journal are in the **public domain**.