The SeLiLi Project: Free Advice on Free Licenses

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Abstract. Although reliable figures have so far proven difficult to obtain, it is undeniable that social practices of sharing informational and information-based goods have become a substantial part of our world. Since the seminal work of the Free Software Foundation in the early '80s, these social practices continue to be based upon a set of legal instruments: copyright licenses. Free/Open Source licenses, such as the GNU General Public License, and licenses for other forms of creative works, such as the Creative Commons Public Licenses, have become much more than a mere curiosity for legal scholars: they are used day after day by persons from all backgrounds, who often do not have the necessary skills to properly understand either the legal meaning of these licenses, or the specific ways to use these licenses in their ordinary activities in a given legal system. Recognizing the cultural and economic value of encouraging new forms of creativity, based upon a "some rights reserved" principle that permits a more liberal and pervasive sharing of informational goods than allowed by "standard" copyright, the Government of the Piedmont Region has teamed with the Politecnico of Torino to create SeLiLi – Servizio Licenze Libere (Libre Licenses Service): a project based in Torino (Italy) and aimed at providing private persons, public institutions and small businesses with information and, when necessary, consulting services on these licenses, with a multi-disciplinar perspective that draws upon law, economics and computer science. This chapter describes the main characteristics of SeLiLi and summarizes the results of its first year of activities.

Keywords: Creative Commons, Free Licenses, Licencing Services

1. Introduction

SeLiLi[1] – the acronym of "SErvizio LIcenze LIbere", or "Libre Licenses Services" – is a project launched by the Polytechnic of Turin and the Piedmont Regional Government in 2006, with the goal to provide the public with professional, up-to-date information and consulting services on copyright licensing; more specifically, on those licenses[2] whose terms are inspired to principles of knowledge and information sharing – termed

1 See http://selili.polito.it/.

2 In this contribution we will use the generic term "licenses" without taking a position on the discussion whether licenses such as the GNU General Public License or Creative Commons Public Licenses are to be considered contracts, obligations, or something else altogether. For a discussion based on the Italian law system, see C. Piana (2006).

"licenze libere" in Italian and roughly translatable as "libre licenses"[3] in English.[4]

2. Why SeLiLi is needed

Although research is still trying to find satisfactory answers to the methodological challenges that must be solved before being able to provide some empirically-sound numbers on the actual usage rate of "libre licenses" by the world population[5] – a first precondition to evaluate the economic value of the transactions that are based upon such licenses[6] – it can be argued that the number of people or organizations wishing to use

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3 The French/Spanish term "libre" has been used with some success in Europe, originally as an alternative to "free" in "free software". The term has the obvious advantage of clarifying the ambiguous meaning of "free", i.e. free as in "gratis" or free as in "freedom", the latter being the correct one in this context.

4 The founders of SeLiLi were well aware of the debates on the usage of the term "libero" in the context of licensing practices, as well as of the fact that the Free Software Foundation does not consider a large subset of the Creative Commons licenses as "libre licenses" or "licenze libere" (see *inter alia* http://www.chander.com/2006/03/richard_stallma.html, last visited on 27/03/2008). Nonetheless, it was decided to focus on the practical goals of the project, for which a catchy name and mission would have been arguably more useful than lengthy discussions on terminology.

5 See *inter alia* C. Waelde et al. (2005), G. Cheliotis et al. (2007), B. Bildstein (2007).

6 See *inter alia* R. Pollock, *The Value of the Public Domain*, IPPR, 2006, available at: http://www.ippr.org.uk/publicationsandreports/publication.asp?id=482, chapter 6 of P. Aigrain (2005), and the recent call for tenders of the European Commission (INFSO/2007/0043, " Assessment of the economic and social impacts of the public domain in the Information Society", which, on the basis of a broad definition of public domain which encompassed "content is material that is not or no longer protected by intellectual property rights", but also "material that, although strictly speaking copyright protected, is generally available for all, as the copyright holder has waived part of his rights allowing for its use and re-use ", requested "to estimate the number of works in the public domain in the EU [...] for published works, such as literary or artistic works, music and audiovisual material, to calculate approximately the levels and ways of use of the public domain material and to highlight the main users in the above mentioned sectors, [...] [t]o estimate the current economic value of public domain works and estimate the value of the works that in the next 10-20 years are to be released into the public domain and determine any change in its value whilst under copyright and once it is on the public domain, [...] [t]o identify and analyze the current practices for re-use of public domain content held by European cultural institutions and assess their capacity to implement the principles for re-use as established in the Public Sector Information (PSI) Directive, [...] [t]o identify and analyze current available mechanisms for voluntary sharing of content and to ascertain the pro's and cons of each mechanism, highlighting the degree of use of the most successful ones and their impact based on relevant indicators". The study, led by Rightscom (see http://www.rightscom.co.uk/) is currently undergoing.

"libre licenses" on their intellectual output is significant. It is certainly so in Italy, judging from the number of blogs and institutional newspapers[7] that are using Creative Commons licenses, from the experiments of public administrations with FLOSS,[8] and from the anecdotal experiences of the members of the Creative Commons Italia working group.[9]

However, the desire to employ "libre licenses" does not necessarily go hand in hand with all the knowledge that is necessary to understand how to properly use them. This is particularly true for private users, who often do not have expertise in law, technology or economics: the emergence of phenomena variously labeled as "commons-based peer production",[10]

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7 For example, the tech-centered online newspaper Punto Informatico (http://www.punto-informatico.it/) or La Stampa (http://www.lastampa.it/), which has licensed two of its major editorial products, TuttoLibri and TuttoScience, using Creative Commons licenses.

8 FLOSS – "Free, Libre, Open Source Software" – can be briefly described as the set of all computer programs (software) whose licensing terms grant licensees the rights (a) to use the program for whatever purpose, (b) to study how the program works (having access to the source code of the program – meaning the preferred form of modification, usually consisting in a complex and large series of statements in a specific formal language – is a logical and practical precondition for this right to be exercised), (c) to copy the program and redistribute such copies, (d) to modify the program and redistribute such modified versions (here again as in point (b), access to the source code is a logical and practical precondition for this right to be exercised). We use the term FLOSS, proposed by Rishab Ghosh, to avoid any discussion on which term – "free", "open source", "libre" – is preferable.

9 In Italy, the translation/porting of CC licenses have been conducted since version 2.0, by the "Creative Commons Italia" working group (http://creativecommons.it), chaired by Prof. Marco Ricolfi of the Dipartimento di Scienze Giuridiche (DSG) of the University of Torino. Creative Commons Italia is not a formal association, but rather a "variable geometry" group of people interested in the Italian porting of the CCPL. The Istituto di Elettronica e di Ingegneria dell'Informazione e delle Telecomunicazioni of the CNR (IEIIT-CNR) provided help and information on the computer-related aspects of the CC licenses. Nowadays, the Italian adaptation of the CCPL, as well as their dissemination, is managed by the Politecnico of Torino, which hosts a multi-disciplinary working group chaired by Prof. Juan Carlos De Martin.

10 See Y. Benkler (2002, 2004, 2007). This model, proposed by Benkler as an alterantive to the Coasean dichotomy between the market and the firm (Coase, 1937) can be basically summarized as a mode of economic production in which the horizontal efforts of large numbers of coordinated volunteers result in the production of complex innovation, given a certain number of *ex ante* (namely that (1) information is "quirky" (sic), i.e. purely non-rival and characterized by the fact that the primary non-human input of information-based activities are the same as its output; (2) physical capital costs of information production have declined; (3) the primary human input in the process – talent – is highly variable and individuals have the best knowledge on how to allocate it, whether themselves or thanks to distributed peer reviewing of each other's talent; (4) information exchange is particularly cheap today) and *ex post* (that no "reduction of [the] intrinsic benefits of participation" to the peer production takes place; this could happen in Benkler's model when behaviours that affects contributor's valuation of the value of participation, such as an

"user-centered innovation",[11] "pro-am revolution",[12] "user-generated content",[13] coupled with the overarching importance that copyright and other policies on "intellectual property"[14] have acquired in recent years – in terms of legal regulations, technological innovations and new business models – puts a large burden on the shoulders of creators and innovators. Even small and medium businesses (which in Europe constitute a large part of the economic landscape[15] and in Italy often take the form of "micro

unilateral appropriation by a member of the project, take place, or when the provisioning of the integration function fails) conditions. Benkler, in *Coase's Penguin*, cites the Linux kernel (see http://www.kernel.org/), the online discussion forum Slashdot (see http://www.slashdot.org/) and the online collaborative encyclopaedia Wikipedia (see http://www.wikipedia.org/) among other, as examples of complex innovations that were produced through peer production.

11 The concept, proposed by Eric Von Hippel (1998, 2005), is based on the assumption that modern-day economic entities do not necessarily own all body of knowledge, whether formalized or not, that is needed in order to produce innovation. Consequently, the attention shifts towards what lies outside the web of entities that are normally understood as being part of the innovation process, i.e. the users. In this model users, rather than the original creators, will be under certain conditions more efficient in innovating a certain product/process.

12 See Leadbeater and Miller (2004).

13 See Organisation for Economic Co-operation and Development, *Participative Web: User-Created Content*, Report DSTI/ICCP/IE(2006)7/FINAL, 2007, which define User-Generated or User-Created Content as "i) content made publicly available over the Interent, ii) which reflects a "certain amonut of creative effort", and iii) which is "created outside of professional routines and practices".

14 We tend to agree with the view that the laws and policies coalesced under the term "intellectual property" are so different from one another that it may be difficult to engage in meaningful discussions. See F.M. Scherer (2007) and R.M.Stallman (2004): for this reason, we will use the term in quotes throughout this contribution. On the other hand, and relevant for the goals of SeLiLi, we notice that defining "intellectual property" as property can produce nice "side effects" in some countries, such as Italy, where property is explicitly supposed to serve a "social function" (Italian Constitution, art. 42(2): "Private property is recognized and guaranteed by the law, which determines the ways it can be acquired, used and its limits, with the goal of ensuring its social functions and making it available for everybody", English translation by the authors, emphasis added). For a thorough review of this argument, see M.A. Carrier (2004): "[c]ourts, commentators, and companies describe IP as a type of absolute property, bereft of any restraints. Examples even make their way into public discourse, as revealed by debates on copyrights that essentially last forever. But astonishingly, some of the most important consequences of this revolution have gone unnoticed. Although scholars have lamented the propertization of IP, they have failed to recognize a hidden promise of the transformation: the narrowing of IP").

15 According to the European Commission, DG Enterprise and Industry, 99% of all enterprises in the European Union are Small and Medium Enterprises, for a total of 23 million businesses (see http://ec.europa.eu/enterprise/smes/facts_figures_en.htm).

enterprises"[16] with a very limited staff) can have a hard time finding all the necessary know-how "in house."

On the other hand, the government of the Piedmont region has been recently focusing a significant part of its budgetary and human resources for the promotion of the "creative economy",[17] on the assumptions – shared by other major institutional actors, including the European Union[18] – that

16 "The average firm in the EU employs just seven people, even though it's true that the figures vary greatly from country to country. Micro-businesses dominate employment in countries **such as Italy (48%)** and Greece (57%), whilst the share of large enterprises in total employment in the United Kingdom is over 45%". Micro-businesses are defined as enterprises having 1 to 9 employees" (European Commission, DG Enterprise and Industry, *supra* n. 15, emphasis added).

17 *Programma Triennale della Ricerca 2007/2009 (legge regionale 4/2006, art. 5),* http://www.regione.piemonte.it/ricerca/dwd/progr_trien.pdf.

18 The European Union has embraced the "i2010 strategy", which is the "policy framework for the information society and media. It promotes the positive contribution that information and communication technologies (ICT) can make to the economy, society and personal quality of life. The i2010 strategy has three aims: to create a Single European Information Space, which promotes an open and competitive internal market for information society and media services, to strengthen innovation and investment in ICT research, to support inclusion, better public services and quality of life through the use of ICT" (http://ec.europa.eu/information_society/eeurope/i2010/index_en.htm). In the context of the i2010 strategy, see in particular Communication COM/2007/0146 final from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - i2010 - Annual Information Society Report 2007, where a significant part is devoted to the explosion of "user-created content" (see *supra* n. 13), the Decision No 456/2005/EC of the European Parliament and of the Council of 9 March 2005 establishing a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable ("The 4-year programme (2005–08), proposed by the European Commission, will have a budget of € 149 million to tackle organisational barriers and promote take up of leading-edge technical solutions to improve accessibility and usability of digital material in a multilingual environment. The Programme addresses specific market areas where development has been slow: geographic content (as a key constituent of public sector content), educational content, cultural, scientific and scholarly content. The Programme also supports EU-wide co-ordination of collections in libraries, museums and archives and the preservation of digital collections so as to ensure availability of cultural, scholarly and scientific assets for future use. **The programme aims at facilitating access to digital content, its use and exploitation, enhancing quality of content with well-defined metadata, and reinforcing cooperation between digital content stakeholders**. It will tackle multilingual and multicultural barriers", http://ec.europa.eu/information_society/activities/econtentplus/, emphasis added) and the eContent+ Work Programme 2006 ("[f]or the purposes of this work programme, public domain refers to content that is not or no longer protected by copyright, for example because it is not entitled to copyright protection or the copyright has been waived or has expired. Related issues that also require examination include material that is protected by copyright, but can be accessed and used by all, e.g. through open access, under Creative Commons licences or as orphan works, i.e. works protected by copyright but where it is impossible to identify the person entitled to exercise the rights", http://ec.europa.eu/information_society/activities/econtentplus/docs/call_2006/ecp_work_programme_2006.pdf).

a) the knowledge-based economy is a key asset in ensuring competitiveness and growth for society and that b) a more liberal approach to "intellectual property" can be beneficial in achieving both economic efficiency for private actors and public policy goals, some of which are clearly prescribed by the Italian Constitution.[19] Providing practical instruments that could ease the uptake of knowledge-related activities is a natural consequence of this approach. The convergence of the above dynamics resulted – among others initiative – in the creation of SeLiLi.

3. Institutional structure

From an institutional point of view, SeLiLi was founded and is currently hosted at the Department of Automation and Computer Engineering of the Politecnico of Torino; more specifically, SeLiLi is a project of the NEXA Center for Internet & Society, a research center for multidisciplinary Internet studies. The key expertise of its relevant members in the fields under consideration, as testified by previous and ongoing activities in the Italian porting of Creative Commons licenses,[20] was considered a basic asset for the success of the project. The Piedmont Region provides the financial resources that are used to cover the costs of second-level consulting services,[21] while the costs incurred for the day-to-day management of the project and for handling first-level cases are covered by the Politecnico of Torino.

4. Operational structure

Similar to the dynamics that "libre licenses" try to promote, SeLiLi is structured in a decentralized way and tries to use as much as practically possible and useful the "wisdom of the crowd".[22] Out of metaphor, the main actors of SeLiLi are the head of operations,[23] the scientific director,[24] and the technical manager. Besides these roles, a number of external auditors participate, on a volunteer basis, in the discussion of some of the cases submitted to SeLiLi. External consultants, specialized in different

19 For example, article 9(1) of the Italian Constitution states that "the [Italian] Republic promotes the development of culture and of scientific and technical research"; art. 33(1) states that "art and science, as well as their teaching, are free [as in freedom]". See also n. 14 *supra*.

20 See *supra* n. 9.

21 For a description of the different "levels", see the section "Operational structure".

22 See J. Surowiecki (2004).

23 Dr Andrea Glorioso took this role from the start of the project until February 2008, when he was replaced by Dr Thomas Margoni.

24 Prof. Juan Carlos De Martin is the scientific director of SeLiLi.

fields, are hired whenever a case seems to be particularly complex. It is worth stressing – since SeLiLi was criticized by some parties based on a wrong understanding of this specific point – that the activities of external consultants are the only one which draw upon the budget allocated by the Piedmont Region to SeLiLi.

A brief work flow of a typical request to SeLiLi will help clarify the role of the above actors and their relationships.

A typical requestor might want to clarify her doubts – of a legal, technological or economic nature – related to "libre licenses". She visits the SeLiLi website and finds references to a number of Frequently Asked Questions that might already provide an answer to her questions. Otherwise, she can contact the "front desk" of SeLiLi via a phone number or using a web-based form.[25]

Either way, the request is handled by the head of operations who will collect as much data as possible on the case. This is often one of the most difficult and most delicate steps of the whole process: a thorough understanding of what exactly is being asked is a precondition for choosing the most appropriate response, but at the same time most requestors pose very generic questions and/or use a "non technical" language that needs further clarifications. The head of operations does not have a mere "book keeping" role to play, but acts as an interface between two worlds: the one of requestors that are often amateurs, if not necessarily in their field, certainly in the field of copyright licensing, and the one of the auditors and of external consultants who are instead highly specialized in their respective fields, but not necessarily in interacting with end-users. This task might require at times scheduling a conference call or a face-to-face meeting in order to clarify any unclear issues. Another parallel task of the head of operations is to filter the requests in order to make sure that certain substantial and procedural requirements are satisfied, i.e. that the request deals with the topics on which SeLiLi provides its services,[26] and that the request comes from a person or from a small business.[27]

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25 http://selili.polito.it/contact.

26 For example, a request to provide assistance for "copyright clearance" activities, even though they might necessary in order to license a particular work under a "libre license", would arguably be only tangential to the institutional goals of SeLiLi. There are obviously many "gray zones" in which a certain degree of elasticity is needed, since only extremely simple requests are exclusively focused on copyright licensing, and even more so on "libre licenses". See also the section "The road ahead".

27 The internal regulation of SeLiLi, on the basis of which the Piedmont Region agreed to provide funding to the project, explicitly limits the provision of information and consulting services to "private persons that wish to use 'libre licenses' outside their professional activities; public organisations (including schools and universities); not-for-profit organisations; professional users and enterprises [...] with less than fifteen employees"

Once the head of operations has duly understood the request and is satisfied that it passes the relevant substantial and procedural requirements, he produces a brief summary of the case which is sent to an internal, private mailing list. A number of external auditors – with expertise in law, computer science, economics – are subscribed to this mailing list and can thus read the summary posted by the head of operations: if any of them feels so inclined, he can provide his own opinion on the best way to answer the specific request. A strict adherence to the "Chatham house" principle, according to which opinions of the auditors, but not their names, can be quoted in the response, has allowed the flow of contributions to flourish, providing a significant added value to the activities of SeLiLi. Again, for the sake of clarity, it is worth repeating that all the external auditors participate strictly on a volunteer, unpaid basis.

At this point, the head of operations might come to the conclusion that a direct answer to the request, possibly with the help of the auditors, can be provided. The case is then classified as a "first-level case" and no further action is required.

However, in some cases the request might be too complex for the head of operations or the auditors to provide a satisfying answer. If this is the case, the request is classified as a "second-level case": the scientific director will contact an external consultant and ask her to provide the necessary consulting services. This activity is paid on the basis of a fixed fee and the relevant budget is provided by the Piedmont Region. Once the external consultant and the requestor have been put in contact – often through a meeting which is attended by the head of operations to facilitate information exchange – the whole process "moves out" of SeLiLi. In many cases – for example, when legal counseling is requested – this is necessary in order to ensure that all the relevant regulations on privacy and professional ethics are respected. The head of operations continues to interact on a rolling basis with the external consultant to keep track of the status of open requests, but will not be provided any further information on the substance of the case. At the end of the consulting activity, the external consultant provides SeLiLi with a report on her activities, with personal or other sensitive data duly omitted when necessary.

However, some cases might be too complex even for the "second-level" procedure to prove effective, especially considering the fixed fee that SeLiLi is able to provide, which might be too low for an external consultant to devote all the necessary resources for the problem at hand. To overcome this problem a special category of projects – the so-called "third-level cases" or "special projects" – have been devised. In this case all the terms of the consulting activity, including the duration, the cost and the desired

(unofficial English translation of the general bylaws of SeLiLi, available in Italian at http://selili.polito.it/node/38).

output, is negotiated on an "ad hoc" basis between the requestor, which is often a large organization, and SeLiLi. External consultants might be used as well for "special projects", but the nature and characteristics of their involvement, including the financial details, will also be negotiated by SeLiLi.

Until the end of 2007, SeLiLi has received twenty-nine requests that have been handled as "first-level cases", three requests handled as "second-level cases" and two requests that led to the creation of "special projects". The following section reports and discusses some of these requests/cases.

5. Some cases

5.1. FIRST-LEVEL CASES

As was explained in the previous section, many requests that are classified as "first-level cases" tend to be simple. They can often be answered by pointing the requestor to a list of Frequently Asked Questions or via a semi-automated response that is "cut and pasted" by the head of operations from previous responses to similar requests. Only in a minor number of cases was the intervention of the auditors necessary in order to answer – although the head of operations often asked for comments in order to stimulate internal debate and to have a second opinion on the request.

Common cases of "first-level" requests that were handled by SeLiLi included questions on which kind of works could the Creative Commons licenses be applied to (all works that are statutorily protected by Italian copyright law); how to correctly use material taken from Wikipedia (the answer pointed to the relevant passages of the GNU Free Documentation License, reminding the requestor that different resources used by Wikipedia, for example the media repository, could be licensed under different terms, and stressing that in any case the relevant statutory provisions on "exceptions and limitations" to copyright would apply, e.g. use for criticism and discussion); how to implement a web form for selecting a particular Creative Commons license while uploading a digital music file to a website (the requestor was given technical references by the technical manager of SeLiLi); whether Creative Commons licenses permitted synchronization of video and audio pieces to obtain a final product (the answer pointed at the relevant text of Creative Commons licensed that define "derivative work");[28] whether it was possible to use

28 Namely, art. 1(b) of the Creative Commons licenses, which define a Derivative Work as "a work based upon the Work or upon the Work and other pre-existing works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which the Work may be recast, transformed, or adapted, except that a work that constitutes a

"the Creative Commons license" for various activities, including playing music in a cinema or licensing the contents of a database of images which would be used for an advertisement banner exchanges between not-for-profit organizations (in this and similar cases the standard answer was that, since there is not only one "Creative Commons license", the requestor had to select a CC license based upon the intended usage – basic directions to choose were provided and further information requested, but in most cases the requestor did not follow up).

Besides these fairly simple cases – which, at least when it is necessary to choose a particular Creative Commons license and especially whether the "Non Commercial" option[29] used to license a certain work would impede actual usage of that work in a specific situation, were not so trivial after all, but were anyway not turned into "second-level cases" because of an apparent lack of interest by the requestors – there are at least two categories of "first-level requests" that stood out and deserve a fuller treatment.

The first category is conceptual and refers to various questions which, at their core, were all based on the wrong assumption that "Creative Commons licenses" (or, by analogy, other licenses) "protected" the licensor's copyright over his/her work or were in any way or form the "source" of such rights. In all these cases the standard answer was that it was statutory law that granted the relevant rights, defined the ways in which these rights "came into life", and protected them – or rather, protected the legitimate holder of these rights. While this might seem absolutely obvious to a person with a legal background, the number of requests on this topic suggest a very limited understanding by "common people" of the basics of copyright law. While this is not by itself a surprise. this might play a role in evaluating the mission of SeLiLi: more specifically, whether SeLiLi should extend its core mission to providing information and consulting services simply on copyright law in general, rather than simply on "libre licenses".

The second category of requests that stood out among all the "first-level cases" is substantial and refers to the relationship between Creative

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Collective Work will not be considered a Derivative Work for the purpose of this License. *For the avoidance of doubt, where the Work is a musical composition or sound recording, the synchronization of the Work in timed-relation with a moving image ("synching") will be considered a Derivative Work for the purpose of this License*" (emphasis added).

29 According to the provisions of Creative Commons licenses which include the NC options, the rights conferred to the licensee cannot be exercised "in any manner that is primarily intended for or directed toward commercial advantage or private monetary compensation. The exchange of the Work for other copyrighted works by means of digital file-sharing or otherwise shall not be considered to be intended for or directed toward commercial advantage or private monetary compensation, provided there is no payment of any monetary compensation in connection with the exchange of copyrighted works".

Commons licenses and the Italian collecting society, SIAE.[30] Reasons of space do not allow a full treatment of the issues involved, but the basic issue that was raised again and again is the possibility for creators, who mandated SIAE to handle their rights – in particular the collection and redistribution of royalties arising from the usage of their works – to use a Creative Commons license on works which SIAE is managing or on other works for which an explicit mandate to SIAE was not given. Given the current legal landscape in Italy, the standard answer to this kind of questions is, unfortunately, that there is a basic, structural incompatibility between licensing using Creative Commons licenses and mandating SIAE to manage one's own rights, because such mandate is exclusive and applies to every single work of the author, including future ones.[31]
Text is displayed by indenting it from the left margin. Quotations are commonly displayed. There are short quotations

5.2. SECOND-LEVEL CASES

As has been discussed above, "second-level cases" stem from requests that are deemed to be particularly complex and to deserve the intervention of an

30 See http://www.siae.it/ and art. 180 of Italian copyright law ("The right to act as an intermediary in any manner whether by direct or indirect intervention, mediation, agency or representation, or by assignment of the exercise of the rights of performance, recitation, broadcasting, including communication to the public by satellite, and mechanical and cinematographic reproduction of protected works, shall belong exclusively to the SIAE. It shall pursue the following activities: 1. the granting of licenses and authorizations for the exploitation of protected works, for the account of and in the interests of the right holders; 2. the collection of the revenue from the licenses and authorizations; 3. the distribution of that revenue among the right holders. The SIAE shall also pursue its activities, in accordance with the provisions of the regulations, in those foreign countries in which it possesses organized representation. These exclusive powers shall not prejudice the right of the author or his successors in title to exercise directly the rights afforded them by this Law. In the distribution of the proceeds referred to in item 3 of the second paragraph, a share shall be reserved for the author in all cases. The limits and the methods of distribution shall be determined by the regulations. However, if the exploitation rights in a work may give rise to the collection of funds abroad on behalf of Italian citizens domiciled or resident within the State territory and the owners of such rights do not, for any reason, collect those funds, the SIAE shall be empowered, after the lapse of one year from the date on which liability for payment arose, to exercise the rights for the account and in the interests of the author or his successors in title. The funds mentioned in the preceding paragraph which are collected by SIAE shall be held, after deduction of the expenses of collection, at the disposal of claimants for a period of three years. If this period elapses without such funds being claimed, they shall be paid to the National Federation of Professional Artists [Confederazione nazionale professionisti ed artisti] for the purposes of providing aid to authors, writers and musicians" – unofficial English translation of Italian Law n. 633 of 1941, as amended by subsequent laws, available at http://www.wipo.int/clea/docs_new/en/it/it112en.html).

31 For a thorough analysis of this issue, see A.M. Ricci (2006a, 2006b).

external consultant, paid with the funds provided by the Piedmont Region. SeLiLi has been handling three second-level cases so far.

The first case was based on a project to create static DVD versions of Wikipedia,[32] the online collaborative encyclopedia, and distribute them, either for a fee or for free over the Internet. The requestor was specifically interested to understand which kind of legal responsibility, if any, would be incurred by redistributing information taken from Wikipedia which might potentially infringe third parties' rights.[33] An external consultant – a lawyer – provided an opinion, advising the project from pursuing its objectives without a clear agreement with the Wikimedia Foundation.[34]

The second case was prompted by a request of a local public administration, which was providing funds to produce a video with and by school pupils, to be released under a Creative Commons license, to help in the "rights clearance" processes for third parties' material. The case was assigned to an external consultant – again, a lawyer – and is still under examination at the time of writing.

The third case originated from a project aimed at collecting Italian traditional cultural expressions, in particular traditional music pieces, and catalog them in an online database, to be released under some form of "libre license" for the public at large. The requestor asked for help in clarifying the legal implications of the project – which were numerous, including the identification of copyright holders, whether the works being recorded could be considered in the "public domain", how the neighboring rights of performers should be managed, how the *sui generis* right over the database[35] could be handled using a Creative Commons license – and the technical strategies do adopt, such as the compression techniques to use to save online the music recordings, most of which resulted in very big files, which kind of database platform to use to handle all the data, and others. The case was assigned to an external consultant for the legal questions (obviously a lawyer) and is pending assignment to another external

32 See http://www.wikipedia.org/.

33 In particular, the requestor wanted to know whether it might possible to use as a defense against third parties' claims the exemptions that EU law grants to "information society providers" *ex* articles 12, 13 and 14 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

34 See http://wikimediafoundation.org/: "the Wikimedia Foundation, Inc., is a nonprofit charitable organization dedicated to encouraging the growth, development and distribution of free, multilingual content, and to providing the full content of these wiki-based projects to the public free of charge. The Wikimedia Foundation operates some of the largest collaboratively edited reference projects in the world, including Wikipedia, one of the 10 most visited websites in the world".

35 *Ex* Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases.

consultants for the technical questions. This case, too, is still under examination at the time of writing.

5.3. THIRD-LEVEL CASES ("SPECIAL PROJECTS")

So far, there were two "special projects" in process of being activated through SeLiLi: in one case, the goal was to help a large Italian regional administration to license its digital archives, containing an impressive wealth of resources – books, pictures, videos – related to the local culture of that part of Italy. The regional administration wanted to use a Creative Commons license, but needed help both for the "rights clearance" processes and to ensure that the provisions of Creative Commons licenses were indeed appropriate, legally, economically and politically, for the regional policy on this matter. There was also a strong interest in supporting the use of free and open source licenses.

The second case involved a legal analysis on the usage of "libre licenses" for the firmware[36] and the hardware (such as electronic, electric and mechanical designs) that are often used in industrial and engineering activities in the electromechanical field. As most "libre licenses" have been designed on the basis of copyright law, which does not necessarily apply for the aforementioned sectors, a "second level case" was not considered sufficient – in light of the timing and budgetary constraints discussed above – to conduct a proper analysis.

Both these "special projects" are still ongoing at the time of writing.

6. Lessons learned

First of all, after one year of activity the need for a service such as SeLiLi is clearly confirmed. The number, variety and interest of the requests, in fact, went beyond the original expectations of the founders, making the project worth confirming and, if possible, worth expanding. The demand also shows that there is probably ample room to create other similar centers elsewhere in Italy.

The implementation of the basic service was rather straightforward, given the pre-existence of a group of experts on the SeLiLi subject field and some seed money to finance the service itself. It took some time,

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36 "In computing, firmware is a computer program that is embedded in a hardware device, for example a microcontroller. It can also be provided on flash ROMs or as a binary image file that can be uploaded onto existing hardware by a user. As its name suggests, firmware is somewhere between hardware and software. Like software, it is a computer program which is executed by a microprocessor or a microcontroller. But it is also tightly linked to a piece of hardware, and has little meaning outside of it" (see http://en.wikipedia.org/w/index.php?title=Firmware&oldid=200669567).

however, to understand on the precise role of SeLiLi in the free licenses ecosystem: SeLiLi, in fact, was not meant to substitute traditional instruments such as mailing lists, which have the great advantage of building knowledge in a transparent and searchable way (e.g., via mailing list archives). Therefore, now SeLiLi staff directs requesters to existing mailing lists whenever it is clear that privacy or other legitimate concerns do not apply, acting as a fall-back solution if the mailing lists fail (as they sometime do.)

Less satisfactory are the results regarding making the SeLiLi website into a knowledge-base. A collection of links, pointers, documents, etc, about free licenses could have certainly been created had the SeLiLi staff not been busy with other tasks. There are, however, great obstacles regarding the creation of official, original material advising about free licenses, e.g., Frequently Asked Questions. Given the legal implications, in fact, of any such public document, the drafting requires a very substantial amount of highly skilled labor. Such material, however, is crucial if the community at large is to be enabled to self clarify many basic issues regarding free licenses.

Another lesson learned is that the broad scope of the requests seems to express the need for advice on something more than simply "free copyright licenses." The interest on free trademark or design licenses is an example of such broader requests. Or the area of exceptions and limitations, all the way to the public domain. It is, therefore, not unconceivable that SeLiLi might need to expand its official scope.

Finally, in the field of free culture it is clear that the interaction with collecting societies is inescapable. However, what is now an often difficult relationship could easily -at least, in principle- become a collaboration, when the use of free licenses by established players will become more widespread.

7. The road ahead

Besides the straightforward aim of bettering of the existing SeLiLi set-up, there are three potential directions that could be pursued in the near future.

The first direction consists in the creation of a network of SeLiLi-like centers in Italy and throughout Europe. There are many potential reasons for that, including a common regional copyright law, geographical proximity, and a common market (see also the example of IPR-Europe, the helpdesk for European projects.) But, also, more practically, the structure of SeLiLi clearly lends itself to economies of scale: the online knowledge base could be just one for each nation; the large resources needed to create original material could be found pooling national (if not European) resources; experts, too, could be pooled using a centralized database and

electronic media. A network of regional SeLiLi could then offer physical meetings, which sometimes are needed, and, more crucially, the financial resources to pay for professional advice, on the assumption that each region would like to give precedence to its local citizens, institutions and companies.

The second direction consists in establishing links with institutional IP offices, e.g., university technology transfer offices, government legal departments, companies IP offices, etc. This is already happening, to some extent, but it could be done on a more systematic way, with the aim of including, with full dignity, the free incenses approach in the standard roster of instruments offered by IP offices, particularly in the public sector.

Finally, the third direction could be to enlarge the goals of SeLiLi, moving from licensing to a more general "commons" approach to intellectual property. The free licenses, in fact, are a means, not an end in themselves: continuing thinking is, therefore, needed to identify what are the best instruments to support free culture and free software at any given time and in any given set of circumstances – local, national, macro-regional and global.

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