



# How To Use Open Source and Free Culture in Jewish Education

Marc Stober

Co-Founder, The Jewish Free Culture Society

Background: flickr user dmon\_21, CC-BY-NC

# Hello!

Who am I?

Who are you?

What challenge brought you here?

# Agenda

1. Introduction
2. Copyright
3. Jewish Sources
4. Project?

**Activity!**

**Get up!**

# Agree <----> Disagree

- I know what “open source” and “creative commons” mean (and have contributed to projects).
- Before handing out copies or showing video in class, I always make sure I have the author/publisher’s permission.
- I’m willing to share some things I create to help other people, even if it means I don’t have control of exactly how it will be used.
- I use Open Source software almost every day.

# Hypothesis

Educators who understand Open Source and Free Culture can apply those concepts to improve Jewish Education.



Copyright



And now, our service begins on page 42...

# What's "source"?

- Computer *source code*
- Jewish sources?

# In the beginning...

- There were no rules
  - “Thou shalt not steal” ???
- Tech sharing culture
  - Mainframes, BBS’s
  - Copyright (Apple v. Franklin, 1983)
- Later
  - Copying was local
  - Copying was lo-fi

# Intellectual Property

- Types of property
  - **Private**
  - **Real (Estate)**
  - **Intellectual**



- Legal rights enforced by government
- Not (necessarily) moral right-and-wrong

Photo: andyarthur via flickr, CC-BY

# U.S. Constitution

The Congress shall have Power . . . To **promote** the Progress of Science and useful Arts, by securing for **limited** Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

*Article I, Section 8 (1787)*

# Copyright

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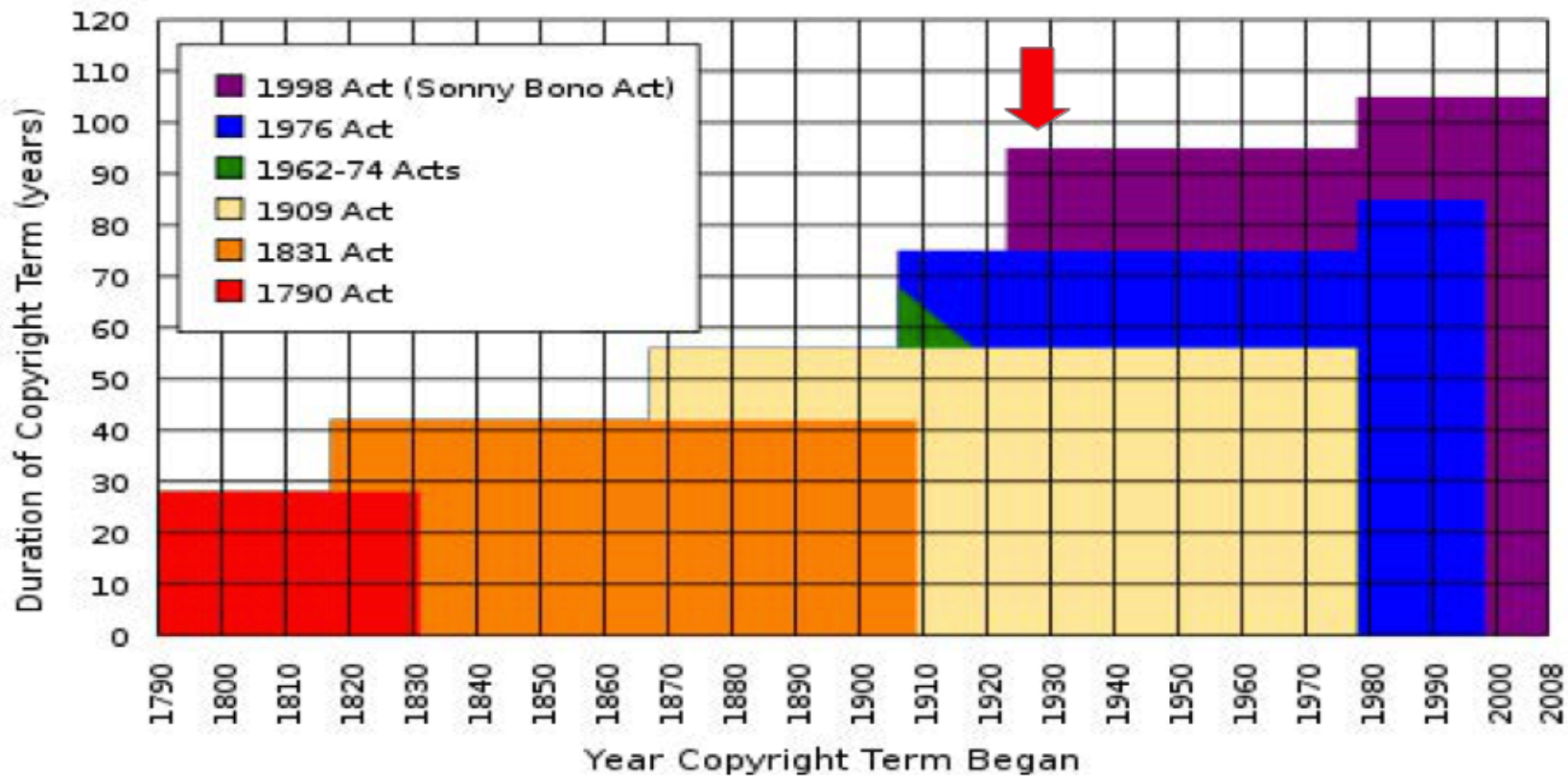
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AND THE RIGHTS OF THE COPYRIGHT HOLDER WILL BE STRICTLY ENFORCED.**

- You don't actually need this any more\*  
\*US finally signed Berne convention in 1989
- "Copyright poisoning"



# THE TERM OF COPYRIGHT IN THE U.S.



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[http://en.wikipedia.org/wiki/File:Copyright\\_term.svg](http://en.wikipedia.org/wiki/File:Copyright_term.svg) CC-BY-SA 3.0 Unported

- Since 1978:
- Life of author +70 years
- Corporate: 95 or 120 years (<http://www.copyright.gov/help/faq/faq-duration.html>)



# What's *Fair Use*?

1. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
  2. The nature of the copyrighted work
  3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole
  4. The effect of the use upon the potential market for, or value of, the copyrighted work
- <http://www.copyright.gov/fls/fl102.html>
  - Also check out <http://fairuse.stanford.edu/>

# Copyright and Liturgy

- Is liturgy like a recipe or a novel?
- Can I pray if someone else owns the words?
- Should we be inviting the State into the Church?

## ... and the Internet

- Digital copies, perfect, ubiquitous
- Supply and demand (it's a law, too! :)
- Napster, newspapers
- **Threat to the cash cow?**
- **Or opportunity...**
  - **To share the “good word”?**
  - **For new innovative businesses?**

# Solution #1: Free Software

- Richard Stallman, Free Software Foundation (local!)
- “free software is an ethical imperative”

<http://www.gnu.org/philosophy/open-source-misses-the-point.html>

- **Copyleft**
- “Free” as in “free speech,”  
not as in “free beer.”

<http://www.gnu.org/philosophy/free-sw.html>

- Libre
- GNU GPL



[http://www.gnu.org/graphics/heckert\\_gnu.html](http://www.gnu.org/graphics/heckert_gnu.html)

## Solution #2: Open Source

- Eric Raymond, Tim O'Reilly, et al 1998
- Tim O'Reilly (a *publisher!*):
  - I don't think it's a religious issue. It's really about how do we actually encourage and spark innovation... The idea is that people can build on it. You give it away because you want other people to do things with it...

([http://news.cnet.com/8301-13505\\_3-10264471-16.html](http://news.cnet.com/8301-13505_3-10264471-16.html))
- Multiple license options (OSI)
- May allow free commercial use
- Copyleft as a pragmatic option

Leaf Node  
Constructivist

## Solutions #3 & 4:

# Free Culture/Creative Commons

- Creative Commons



- Open Source, not just for software
- Wikipedia
- If you use non-commercial option—not so free

- Free Culture

<http://creativecommons.org/freeworks> or <http://freedomdefined.org>

- Can use and built upon it
  - Great for the Jewish stuff!
- Oh, and public domain

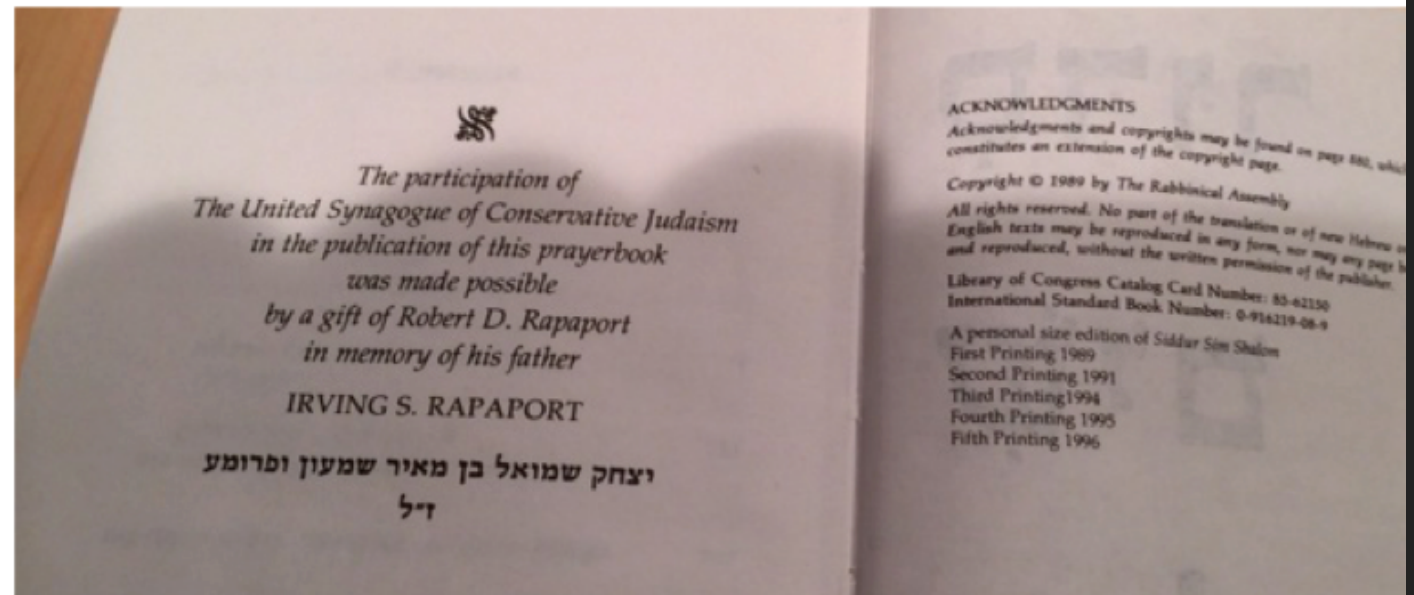


# Good business?

- Open source: IBM, Microsoft, Google, Apple
- Open Access: academic
  - “Gold OA”

<http://creativecommons.org.nz/2012/10/open-access-some-thoughts-from-a-publishers-perspective-2/>

- Why not here?





# Benefits!

- Network effects
- Increase usage/distribution (Pew Study, HINT HINT)
- Change the world!

# Jewish Sources

# Each Person Should Write a Torah

## 2. Sefer HaChinukh 613:1

For each person to write a Torah scroll for oneself - we have been commanded for each person in Israel to own a Torah scroll...

Among the roots of this mitzvah, it is because it is well-known among people that they do everything according to that which they find prepared for themselves, and therefore God commanded us, each and every one of the Children of Israel, to have a Torah scroll prepared and available to him, so that he can read it always and will not have to go looking for it at another's house...



(א) לכתב כל אחד ספר תורה לעצמו - שנצטוונו להיות לכל איש מישראל ספר תורה...

משרשי המצוה, לפי שידוע בבני אדם שהם עושין כל דבריהם לפי ההכנה הנמצאת להם, ועל כן צונו ברוך הוא להיות לכל אחד ואחד מבני ישראל ספר תורה מוכן אצלו שיוכל לקרות בו תמיד ולא יצטרך ללכת אחריו לבית חבריו...

# “Freely and Openly in the Public Domain”

ויחנו במדבר -  
נתנה תורה  
דימוס פרהסיא  
במקום הפקר,

“And they camped in the desert” (Ex. 19:2) – The Torah was given in a public domain, a place without ownership. If it had been given in the land of Israel, the nations of the world would say that they do not have a part in it. Therefore, it was given in a public domain and all who want to partake in it can come and take.

*Mechilta Shemot 19:2*

# Attribution

The 48th virtue of an excellent student according to Rabi Yehoshua Ben Levi (Pirkei Avot 6:6) is “**repeating a statement in the name of the one who said it.** For we have learned that anyone who says a statement in the name of the one who said it brings redemption to the world, as the verse in the Book of Esther, chapter 2 verse 22 says, ‘*And Esther said to the King in the name of Mordechai.*’”

Additionally, it is important to recognize how free and open source licensed sharing is akin to Maimonides fifth level of charity in which **one does not know to whom one gives, but the receiver knows their benefactor.**

# Attribution

Rabbi Hizkiah said in the name of Rabbi Yirmiah son of Abba in the name of Rabbi Yoḥanan: Anyone who does not attribute a teaching in the name of its originator, about him scripture says: “Do not steal from the a poor man, because he is poor.” (Proverbs 22:22) And it is the law that when a man hears a teaching [and repeats it], he is required to attribute it, even if he heard it third-hand.

*Midrash Tanḥuma Parashat Bemidbar 22*

In his *Sfas Emes*, the Gerrer Rebbe, Yehudah Aryeh Leib Alter, teaches on Parshat Terumah:

The *Midrash Tanhuma* quotes: “I have given you good *lekaḥ* (teaching)” (Proverbs 4:2). [*Lekaḥ* can also refer to something acquired by purchase.]

It then offers a parable of two merchants, one who has silk and the other peppers.

Once they exchange their goods, each is again deprived of that which the other has.

But if there are two scholars, one who has mastered the Order of Seeds and the other who knows the Order of Festivals, once they teach each other, each has both orders [of the *Mishnah*].



# Let It Flow!

What happens if I learn and I don't want to teach you? He says I do the most horrible thing. I take the infinite Torah and make it finite. Because it stops with me really. It flows into me and it stops. And if I keep on teaching it means it's flowing through me.

--Shlomo Carlebach

Via Moshe Pesach Geller via

<http://opensiddur.org/2011/01/a-decision-tree-for-choosing-freelibre-licenses-for-cultural-and-technological-work/>

CC-BY-SA 4.0



# Printer's Rights in Halakha

A famous rabbi from a foreign land Meir from Padua partnered with an aristocratic publisher to publish the Rambam's Mishneh Torah. They spent a great deal of money publishing the book. A rich aristocrat decided to publish the same book out of spite for the rabbi's decision to partner with his competitor. And he did it in order to anger the rabbi and to make him lose money. I will judge this case according to the laws of Israel as if both were Jews, and I will prove with four arguments that the winning side is the rabbi's, and that he should be allowed to sell his books first, and that no Jew should buy from the newer printing of the Rambam. . . .

The first reason is derived from Bava Batra 21b: "If a man in an alley sets up a mill, and a second in the same alley desires to set up a mill, the first can prevent the second from doing so [on the grounds that he is interfering in his livelihood]. Even if the second had done it (because it is his profession), he can be prevented from doing so...

*Teshuvot Rema 10, R. Moshe Isserles, 1520-1572 [i.e., not דאור"ייתא]*

Via a source sheet "Public policy, technology and halacha: The development of copyright in Jewish law" by Efraim Feinstein, CC-BY-SA 3.0 Unported (lots more sources there if you're interested!)

# The Jewish Worldview

*Ner L'Echad, Ner L'Meah*

A candle for one is a candle for one hundred.

*Talmud, Shabbat 122*

And when ye reap the harvest of your land, thou shalt not wholly reap the corner of thy field, neither shalt thou gather the gleanings of thy harvest...

neither shalt thou gather the fallen fruit of thy vineyard.... [orphaned works?]

[only then] Ye shall not steal...

*Leviticus 19:9-11*

# Modern Legal Scholarship

## Is Copyright Property? — The Debate in Jewish Law

*Neil W. Netanel and David Nimmer\**

*Is copyright a property right? Common law and civil law jurists have debated that issue for over three centuries. It remains at the heart of battles over copyright's scope and duration today, even if its import lies principally in the rhetorical force of labeling a right as "property," not in any doctrinal consequence flowing directly from that label.*

*In parallel to their common law and civil law counterparts, present-day rabbinic jurists engage in lively debate about whether Jewish law recognizes copyright as a property right. And, as in secular law but for different reasons, that issue has significant repercussions in Jewish law. As discussed in rabbinic court decisions and writings, whether Jewish law accords authors a right of ownership in their*

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\* Respectively, Pete Kameron Endowed Chair in Law, UCLA School of Law, and Professor from Practice, UCLA School of Law. We are grateful to Eliemelech Weismann and editors of *Theoretical Issues in Law* for their helpful comments.

# Open Source Judaism 1.0

"The Internet interested me in keeping conversation and autonomy alive. I saw in Judaism an entire philosophy – even a civilization – dedicated to conversation and autonomy. So that's where I turned for support. I found the argument of 'continuity' used as justification to enact one of the greatest discontinuities in Jewish history: turning a system of life into a religion for blind believers and shutting down the conversation. Fundamentalists are running the asylum, and they don't even know they are fundamentalists. They think that's Judaism. And thus, we're here."

Douglas Rushkoff, quoted in "Douglas Rushkoff and Open Source Judaism,"  
*B'nai Brith Magazine* August 2004, retrieved from

<http://www.rushkoff.com/press-individual/2008/12/13/douglas-rushkoff-and-open-source-judaism.html>

- Open Source Religion?

# Let's Keep Adding...

- Be explicit
- Be up-front
- Be realistic
- Honor your users
- Share in a way that makes it available (formats)

**Benefits to educators.**

**Benefits to learners.**

Project?

Thank you!

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