

*ISEA2012 Machine Wilderness:
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Proposal for the Free/Open/Libre Art Foundation

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Occupy Wall Street engages cultural producers in action-oriented conversations about the institutions of power and property that surround us. This praxis led to the following proposal:

Proposal for the Free/Open/Libre Art Foundation

“Free art” means art that respects viewers' freedom and community. Roughly, **viewers have the freedom to use, copy, distribute, study, change and improve the art**. With these freedoms, the viewers (both individually and collectively) control the art and what it does for them.

When viewers don't control the art, the art controls the viewers. The artist controls the art, and through it controls the viewers. This nonfree or “proprietary” art is therefore an instrument of unjust power.

Thus, “free art” is a matter of liberty, not price. To understand the concept, you should think of “free” as in “free speech,” not as in “free beer”.

Art is free art if the art's viewers have the four essential freedoms:

- The freedom to use the art, for any purpose (freedom 0).
- The freedom to study how the art works, and change it so it does your computing as you wish (freedom 1). Access to the materials, tools, and documentation of the production process is a precondition for this.
- The freedom to redistribute copies so you can help your neighbor (freedom 2).
- The freedom to distribute copies of your modified versions to others (freedom 3). By doing this you can give the whole community a chance to benefit from your changes. Access to the materials, tools, and documentation of the production process is a precondition for this.

Art is free art if viewers have all of these freedoms. Thus, you should be free to redistribute copies, either with or without modifications, either gratis or charging a fee for distribution, to anyone anywhere. Being free to do these things means (among other things) that you do not have to ask or pay for permission to do so.

You should also have the freedom to make modifications and use them privately in your own work or play, without even mentioning that they exist. If you do publish your changes, you should not be required to notify anyone in particular, or in any particular way.

The freedom to use art means the freedom for any kind of person or organization to use it on any kind of system, for any kind of overall job and purpose, without being required to communicate about it with the artist or any other specific entity. In this freedom, it is the viewer's purpose that matters, not the artist's purpose; you as a viewer are free to use the art for your purposes, and if you distribute it to someone else, she is then free to use it for her purposes, but you are not entitled to impose your purposes on her.

The freedom to redistribute copies must include all forms of the art, as well as materials, tools, and documentation of the production process, for both modified and unmodified versions. It is OK if there is no way to produce a binary or executable form for a certain art (since some languages don't support that feature), but you must have the freedom to redistribute such forms should you find or develop a way to make them.

In order for freedoms 1 and 3 (the freedom to make changes and the freedom to publish improved versions) to be meaningful, you must have access to the materials, tools, and documentation of the production process of the art. Therefore, accessibility of materials, tools, and documentation of the production process is a necessary condition for free art. Obfuscated “materials, tools, and documentation of the production process” is not real materials, tools, and documentation of the production process and does not count as materials, tools, and documentation of the production process.

Freedom 1 includes the freedom to use your changed version in place of the original. If the art is delivered in a product designed to use someone else's modified versions but refuse to use yours – a practice known as “tivoization” or “lockdown”, or (in its practitioners' perverse terminology) as “secure boot” – freedom 1 becomes a theoretical fiction rather than a practical freedom. This is not sufficient. In other words, these binaries are not free art even if the materials, tools, and documentation of the production process they are compiled from is free.

One important way to modify art is by merging in available free subroutines and modules. If the art license says that you cannot merge in a suitably licensed existing module – for instance, if it requires you to be the copyright holder of any code you add – then the license is too restrictive to qualify as free.

Freedom 3 includes the freedom to release your modified versions as free art. A free license may also permit other ways of releasing them; in other words, it does not have to be a copyleft license. However, a license that requires modified versions to be nonfree does not qualify as a free license.

In order for these freedoms to be real, they must be permanent and irrevocable as long as you do nothing wrong; if the artist of the art has the power to revoke the license, or retroactively add restrictions to its terms, without your doing anything wrong to give cause, the artwork is not free.

However, certain kinds of rules about the manner of distributing free art are acceptable, when they don't conflict with the central freedoms. For example, copyleft (very simply stated) is the rule that when redistributing artworks, you cannot add restrictions to deny other people the central freedoms. This rule does not conflict with the central freedoms; rather it protects them.

“Free art” does not mean “noncommercial”. Free art must be available for commercial use, commercial development, and commercial distribution. Commercial development of free art is no longer unusual; such free commercial art is very important. You may have paid money to get copies of free art, or you may have obtained copies at no charge. But regardless of how you got your copies, you always have the freedom to copy and change the art, even to sell copies.

Whether a change constitutes an improvement is a subjective matter. If your modifications are limited, in substance, to changes that someone else considers an improvement, that is not freedom.

However, rules about how to package a modified version are acceptable, if they don't substantively limit your freedom to release modified versions, or your freedom to make and use modified versions privately. Thus, it is acceptable for the license to require that you change the name of the modified version, remove a logo, or identify your modifications as yours. As long as these requirements are not so burdensome that they effectively hamper you from releasing your changes, they are acceptable; you're already making other changes to the art, so you won't have trouble making a few more.

A special issue arises when a license requires changing the name by which the art will be invoked from other arts. That effectively hampers you from releasing your changed version so that it can replace the original when invoked by those other arts. This sort of requirement is acceptable only if there's a suitable aliasing facility that allows you to specify the original art's name as an alias for the modified version.

Rules that “if you make your version available in this way, you must make it available in that way also” can be acceptable too, on the same condition. An example of such an acceptable rule is one saying that if you have distributed a modified version and a previous artist asks for a copy of it, you must send one. (Note that such a rule still leaves you the choice of whether to distribute your version at all.) Rules that require release of materials, tools, and documentation of the production process to the viewers for versions that you put into public use are also acceptable.

The GNU project uses copyleft to protect these freedoms legally for everyone. But noncopylefted free art also exists. We believe there are important reasons why it is better to use copyleft, but if your art is noncopylefted free art, it is still basically ethical.

Sometimes government export-control regulations and trade sanctions can constrain your freedom to distribute copies of arts internationally. Artists do not have the power to eliminate or override these restrictions, but what they can and must do is refuse to impose them as conditions of use of the art. In this way, the restrictions will not affect activities and people outside the jurisdictions of these governments. Thus, free art licenses must not require obedience to any export regulations as a condition of any of the essential freedoms.

Most free art licenses are based on copyright, and there are limits on what kinds of requirements can be imposed through copyright. If a copyright-based license respects freedom in the ways described above, it is unlikely to have some other sort of problem that we never anticipated (though this does happen occasionally). However, some free art licenses are based on contracts, and contracts can impose a much larger range of possible restrictions. That means there are many possible ways such a license could be unacceptably restrictive and nonfree.

We can't possibly list all the ways that might happen. If a contract-based license restricts the user in an unusual way that copyright-based licenses cannot, and which isn't mentioned here as legitimate, we will have to think about it, and we will probably conclude it is nonfree.

When talking about free art, it is best to avoid using terms like “give away” or “for free,” because those terms imply that the issue is about price, not freedom. Some common terms such as “piracy” embody opinions we hope you won't endorse.

Finally, note that criteria such as those stated in this free art definition require careful thought for their interpretation. To decide whether a specific art license qualifies as a free art license, we judge it based on these criteria to determine whether it fits their spirit as well as the precise words. If a license includes unconscionable restrictions, we reject it, even if we did not anticipate the issue in these criteria. Sometimes a license requirement raises an issue that calls for extensive thought, including discussions with a lawyer, before we can decide if the requirement is acceptable. When we reach a conclusion about a new issue, we often update these criteria to make it easier to see why certain licenses do or don't qualify.

If you are contemplating writing a new license, please contact the Free art Foundation first by writing to that address. The proliferation of different free art licenses means increased work for viewers in understanding the licenses; we may be able to help you find an existing free art license that meets your needs.

If that isn't possible, if you really need a new license, with our help you can ensure that the license really is a free art license and avoid various practical problems.

How to Make This Document:

1. take documents from the Free Software Foundation
2. replace “software” with “art”
3. replace “program” with “art”
4. replace “users” with “viewers”
5. replace “developer” with “artist”
6. replace “run” with “use”
7. replace “source code” with “materials, tools, and documentation of the production process”
8. replace “computer system” with “system”

Bio

Caroline Woolard graduated from the only tuition-free art school in the country (Cooper Union, BFA 2006) with a strong commitment to the solidarity economy movement and conceptual art. In 2009, Woolard cofounded three systems for cultural production: a studio space, OurGoods.org, and TradeSchool. These experimental systems of mutual aid inform and enable her short term projects, including: Exchange Cafe for *Artists Experiment* at the Museum of Modern Art (2013), *The Economy of We* at The University of Massachusetts Amherst (2012), and a *Barricade to Bed* toolkit for a feminist exhibition at *Eyebeam Art and Technology Center* (2013). Woolard teaches at The New School, coordinates Trade School, and is currently seeking partners for a 60 year project in New York City: a community land trust for a coalition of artists, internet activists, and community organizers.

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