

# ALTERNATIVE LICENSING AND THE FREE CULTURE COMMUNITY IN SÃO PAULO

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## *The research*

This research was carried out for two years at the University of São Paulo, and basically had two parts: a theoretical one, which focused on the reconstruction of the trajectory of alternative licensing from the emergence of free software as a concept, with Richard Stallman in the 1980's, to Creative Commons and beyond; and an empirical investigation attempting to map free culture initiatives in the city of São Paulo, to understand what they do, what licenses they adopt and what they think about those licenses and free culture in general.

The theoretical research was based on readings of conceptual texts and documents about the main licenses adopted by the free culture community. The empirical study was based on the analysis of a survey sent to 256 allegedly free culture initiatives that were identified through the years 2007 and 2008. This mapping was made through monitoring web 2.0 platforms adopting 'free licenses' (Wikipedia, Flickr, Overmundo and Trama Virtual), through monitoring self-acclaimed free culture events, through web searching for free licenses (such as Creative Commons and GPL), through identifying Culture Hotspots<sup>2</sup>, through web searching for academic groups defending open access, through web searching for self-acclaimed free culture and free software activists, and through the indication of free culture practitioners by others already identified. So the criteria for building the sample was: self-identification as a free culture practitioner or adopting a free license. Those 256 identified

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<sup>2</sup> *Culture Hotspots* are initiatives developed by civil society that receive funding from the Ministry of Culture and became responsible to articulate and promote the cultural initiatives that already exist in the community they belong. They are encouraged (but not required) by the Ministry of Culture to use free software and release what they do with a free license.

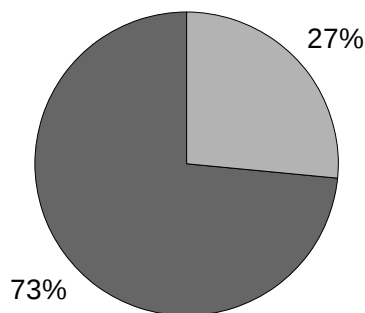
initiatives were then grouped into several categories – visual arts, music, free software, university/research groups, communication, literature and culture hotspots. A survey was then prepared and put online, and the initiatives were asked through e-mail to reply. The percentage of replies was 20% (51 answers).

	SAMPLE UNIVERSE	INTERVIEWED SAMPLE	% OF INTERVIEWED OVER UNIVERSE
<b>Category of groups:</b>			
Communication	12	3	25%
Free software	15	12	80%
Visual arts	58	8	14%
Music	48	8	17%
Literature	95	11	12%
Culture hotspots	15	5	33%
University/ research groups	13	4	31%
<b>TOTAL</b>	<b>256</b>	<b>51</b>	<b>20%</b>

**Some of the results**

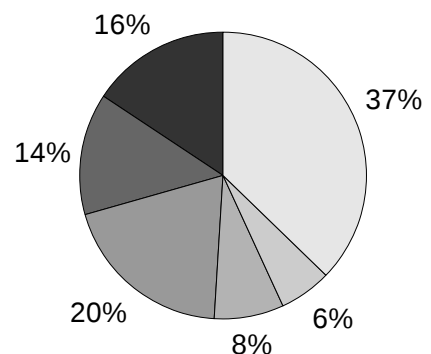
The first part of the survey showed some key aspects of the free culture community in São Paulo. Initiatives are mostly collective (73%) and unlike common sense they have existed for a while (51% over three years and 37% over five years)<sup>3</sup>

**Chart 1.** Kind of activities



■ Colective ■ Individual

**Chart 2.** How long the activity has been developed?

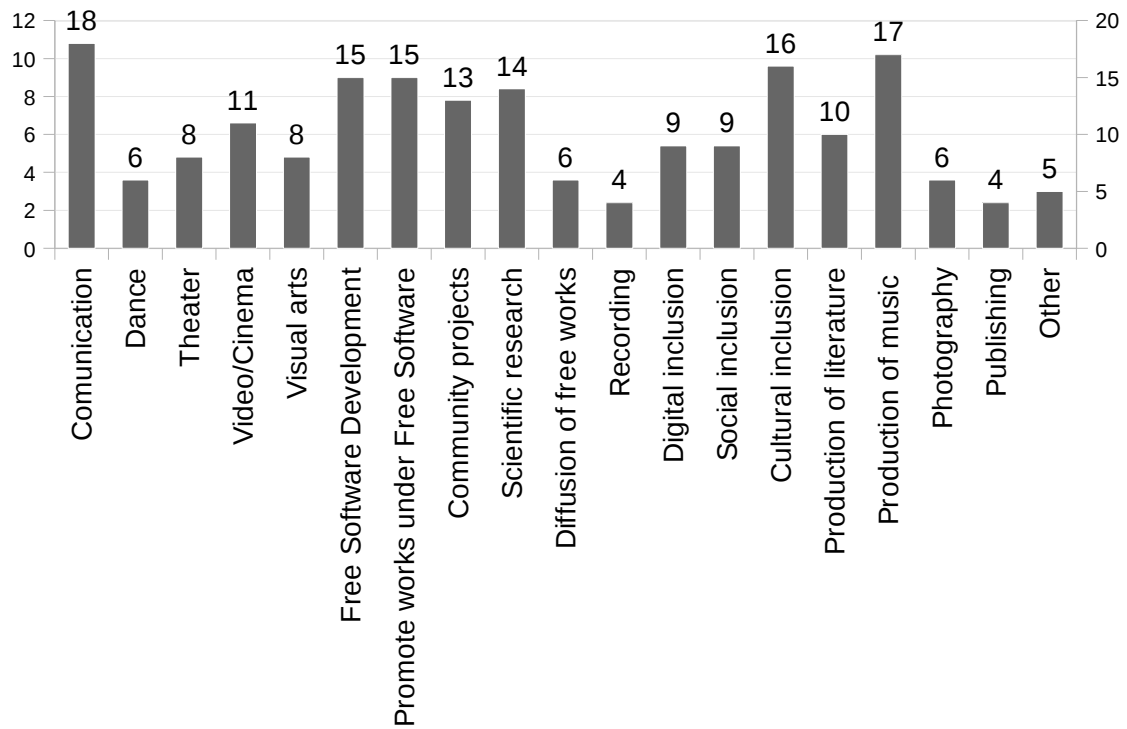


■ Less than 1 year ■ 1- 2 years ■ 2- 3 years  
 ■ 3- 4 years ■ 4- 5 years ■ More than 5 years

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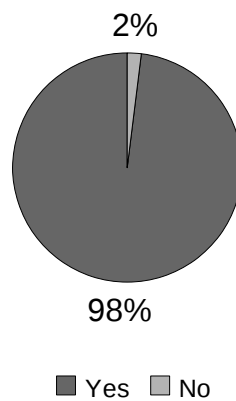
In order to determine in what kind of activities those initiatives were involved they were asked to choose from a set of given categories while having the option of creating new ones and choosing more than one. Results are as below:

**Chart 3.** Types of activities

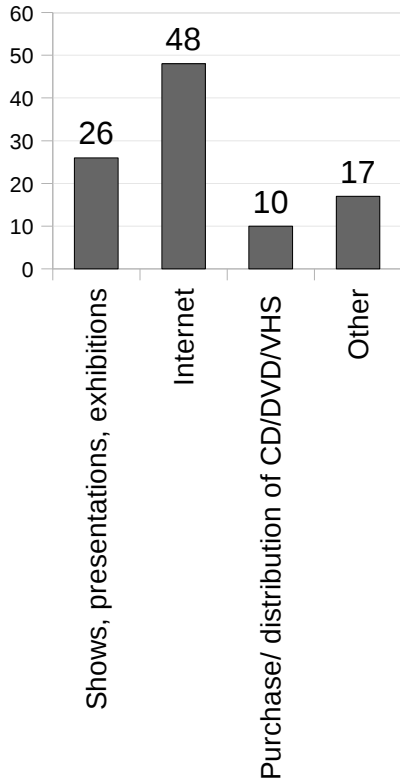


They were then asked how users access their work and, not surprisingly, most initiatives provide for Internet access to their work.

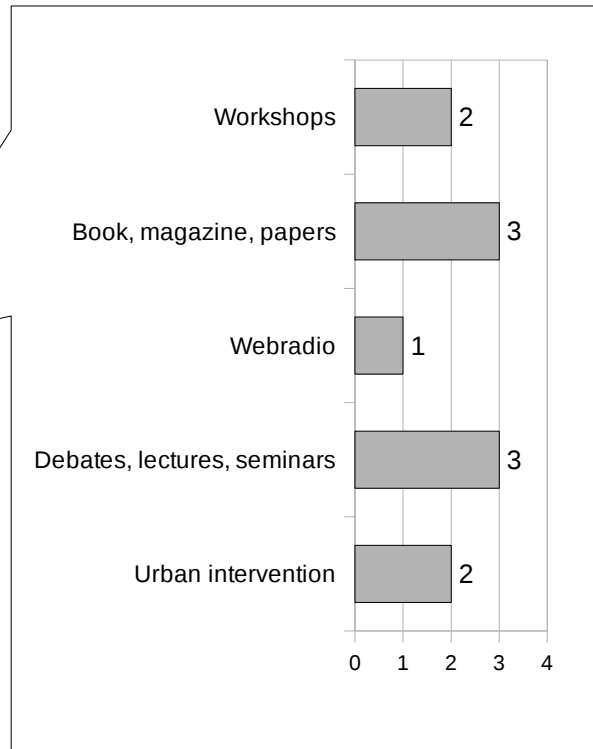
**Chart 4.** Work is made available on the Internet?



**Chart 5. How users access work?**

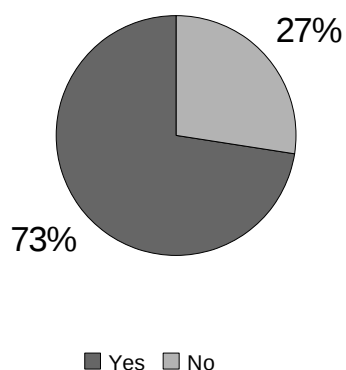


**Chart 5.1 Other**

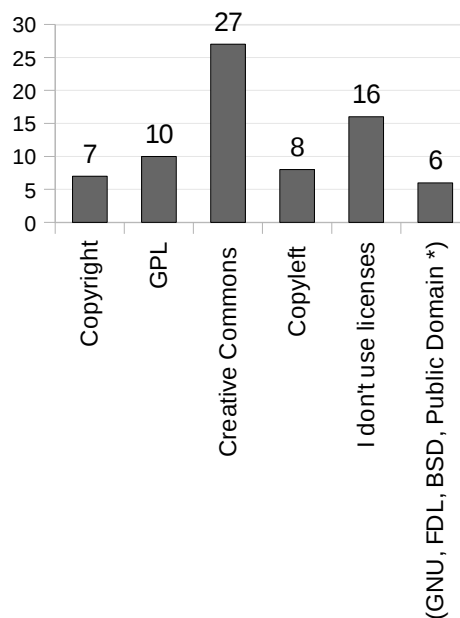


Most repliers use some kind of copyright license. However, many don't know what they mean or how they connect to free culture. Also remarkable is their allegation of adopting simultaneously two contradictory licenses - which seems more related to confusion than to self-aware dual licensing.

**Chart 6.** Do you use any kind of copyright license?

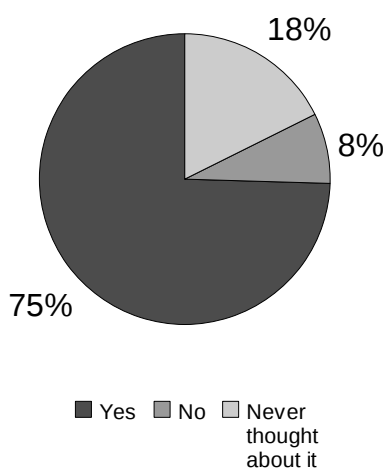


**Chart 7.** Use of licenses \*

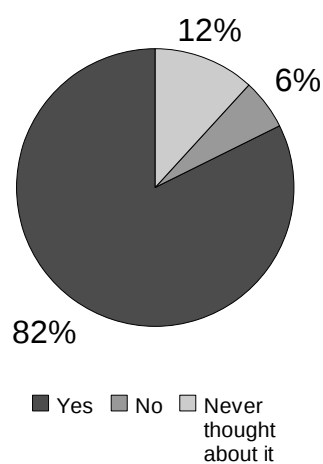


When asked about the self-attribution (or non-attribution) of free licensing and free culture to their own works, 75% considered their license "free", while 82% considered their activity "free culture".

**Chart 8.** Do you consider the license you adopt is free?



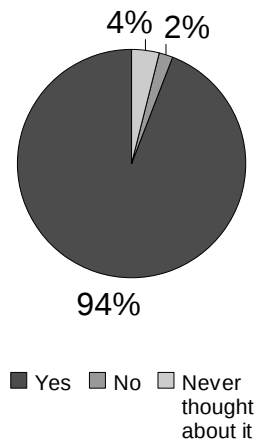
**Chart 9.** Do you consider your activity is free culture?



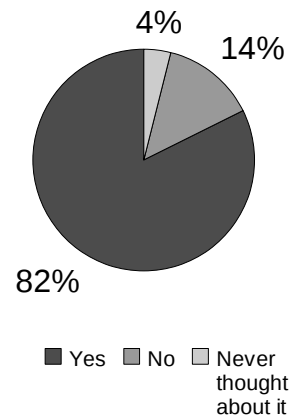
\* You can not put a work in the public domain under Brazilian law.

In yet another group of questions, initiatives were asked about their intentions in licensing regarding allowing copying, distribution, modification and commercial use. About 94% said they permit free access to their whole work in the Internet, and 82% permit other people to freely copy and attribute the work. An important point to be highlighted is that 57% of the initiatives refuse to allow reproduction of their work for commercial purposes. Another salient point is the permission to modification and production of derivative works by 78% of the initiatives.

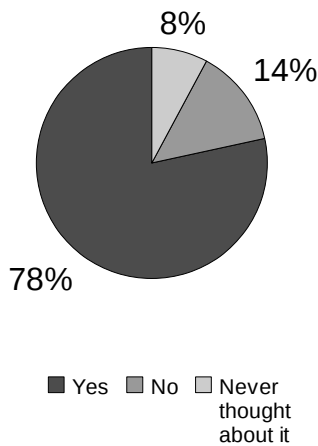
**Chart 10.** Do you allow free access to the work's full version through the Internet (or by other means)?



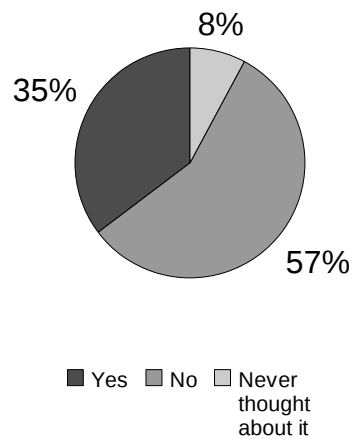
**Chart 11.** Can people copy and distribute it freely?



**Chart 12.** Can people modify your work and/or incorporate it into another one?



**Chart 13.** Do you allow commercial copies of your work?



The last question of the survey was open, and asked “What does free culture mean to you?”, in order to allow a more qualitative assessment of what free culture means to these groups and individuals. To make the analysis of the answers clearer, keywords were inferred. Answers that included key elements in the conceptualization of either Lessig (2004) or Stallman (2002) were counted as "in accord with one of the standard definitions of free culture".

Among the 51 responses, only 3 people (6%) said to know nothing about free culture. From the remaining total, 11 people (22%) provided responses that contained keywords that could be clearly related to the definitions of Lessig (2004) and Stallman (2002), such as: reference to the four freedoms of free software, free culture as a middle ground between "all rights reserved" and infringement of copyright, and free culture as free use, distribution, copying and modification.

Lastly 37 people (72%) provided answers that diverge more or less from the key theoreticians. A few examples of frequent keywords: democratic access to works (4 replies); use the Internet for dissemination (2 replies); culture as intangible property (2 replies); free speech (8 replies); unrestricted access to works (5 replies); writers / producers properly paid / recognized (1 reply); works without commercial value (2 replies); gave the definition of culture (1 reply); free access to works (1 reply); work that is opposed to intellectual property (1 reply); evolution of species (1 reply); new focus on copyright, usually without intermediaries (4 replies); allusion to popular culture and public domain (5 replies).

### ***Closing Remarks***

In order to compare free culture standard theory to free culture's practitioners' self

understanding as verified in this research, it is useful to systematize the three main theoretical definitions and to ask: what is, indeed, free culture?

For Richard Stallman (2002) - pioneer of free software and influential not only in software, but also in free culture debates - free software is basically "a matter of the users' freedom to run, copy, distribute, study, change and improve the software." Lawrence Lessig, in a very simplified way, believes that free culture is in between the extreme regulation by the law over creative works, and the lawless use that does not respect the author's rights (2004). It is basically culture adopting any of a set of flexible licenses allowing for greater freedom to copy and adapt. However, more recently Creative Commons defined 'Free Cultural Works' "as works or expressions which can be freely studied, applied, copied and/or modified, by anyone, for any purpose" - closer to Stallman's free software definition. These definitions are in contrast with the self-understanding of the free culture community of São Paulo, since only 22% of the answers are in accord with these definitions.

### ***Main findings and challenges:***

There seems to be divergence between licensing intent and license actually adopted by free culture practitioners in São Paulo; and inconsistency between the concept of free culture held by practitioners and theoreticians (Stallman, Lessig).

Another finding, is that theoreticians' strong definition of free culture (such as Stallman's and Creative Commons Free Culture seal's) excludes 57% of São Paulo free culture community, since most practitioners do not want to allow for commercial use.

Another relevant finding, is that although practitioner of free culture in São Paulo diverge on what they understand as free culture, core *practical* agreement rests on making



work available on the Internet [94% of practitioners].

### ***Hypotheses and suggestions:***

Although these results from the free culture community in São Paulo may not be extensible to the whole global free culture community, some hypotheses and suggestions can be drawn preliminary:

- \* Theoreticians' understanding of free culture does not reach average user, but impact use through large platforms such as Wikipedia;

- \* Web 2.0 platforms' licensing schemes are not fully understood by user, who sometimes seem forced to adhere to the license to use the tool - this use of license seems to be often unaware.

- \* Platforms should include more flexibility in the offering of licenses to catch up with the community's self understanding of free culture.

- \* Divergence between practitioners and theoreticians may not be due to lack of knowledge of theory, but to a different understanding of what free culture is.

### ***Reference List***

LESSIG, L. (2004). *Free Culture: How big media uses technology and the law to lock down culture and control creativity*. New York: The Penguin Press.

STALLMAN, R. M. (2002). *Free Software, Free Society: selected essays of Richard M. Stallman* (Edited by Joshua Gay). Boston: Gnu Press.