

Licensing Software

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Introduction to Licensing

- Most agreements relating to software do not transfer ownership, rather grant permissions under copyright
 - licensing
 - full range of contract options
 - in contrast to simple purchase (which is usually governed by general legal rights and principles)

Forms of License

- License can be considered from following perspectives
 - inward (acquiring rights)
 - outward (bestowing rights)
- Possible chain of license agreements
 - Software licensed inwardly then outwardly
 - Inwardly licensee is not end user
- Sometimes software is newly created
 - Development license
- Won't consider other (rarer) situations

Main Aspects of License Agmt

- Rights Granted – Key factor
 - limited by party, number of users, type of use (e.g. home use), field of use, geography, etc
 - usually binary code (open source discussed later)
 - no decompilation
 - compensation (payment)
- Warranties + Indemnities
- Other IPRs – e.g. confidentiality, patents
- General legal provisions

End User License Agmt (EULA)

- Common for desktop software, Windows etc
 - no re-distribution rights
 - except possibly in relation to certain materials
- Generally non-negotiable (and rarely read)
- Key distinguishing features
 - home/business use
 - single/multiple machines
 - limited indemnity/warranty
 - no/limited support
 - will generally apply to program updates

Business Users

- Wide range of types of agreement
- Internal use
 - some standard EULA
 - may incorporate mass pricing, additional rights, etc
 - server code – often negotiate agreements
 - bespoke code development
- Redistribution
 - have to match inward/outward licensing

Business Users – Licensed User

- Who runs code
 - employees
 - customers – e.g. web-site code
 - (sub)contractors
 - possible outsourcing
 - significant change – outside direct control
 - cloud computing
 - subsidiaries – related companies

Business Users – License Scope

- Rights granted
 - Use
 - (Internal) duplication (?)
 - Redistribution (?)
 - Modification (?)
 - impact on support, warranty, etc
- License restrictions
 - by number of users
 - by machine/processors/processor power
 - what happens if license exceeded?
 - by geography, field of use, etc

Business Users - Support

- Support
 - bug fixes, virus protection, compatibility with other systems – e.g. OS upgrades, additional functionality
 - defined severity levels and response handling
 - often incorporated into ongoing license and/or maintenance charge
 - may include new releases
 - might have to pay extra for new versions
 - obligation on licensee to install updates
 - obligation on supplier for term of support
 - ability to use third party (escrow?)

Business Users - Termination

- Who has right to terminate
- Conditions of termination
 - breach only
 - sensible conclusion
- What survives termination?
 - right to use software
 - payment obligations
 - confidentiality restrictions

Warranty + Indemnification

- Does it work properly?
 - EULA often limited to media OK
 - Business - in accordance with documentation
- Infringement of 3rd party IPR?
 - should at least cover copyright
 - may also cover patents
 - often significant limitations
 - e.g. to purchase price
 - notification requirements by licensor

Redistribution Agreements

- Wide range of potential license terms
 - some purely redistribution in unmodified form
 - some to incorporate into own product code
 - payment obligations
- Is your end user license agreement compatible with redistribution agreement
 - scope of license
 - support (who provides)
 - warranty/indemnities
 - payments

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Open Source

- Programs such as Linux, Firefox, etc
- Two defining aspects from legal perspective
 - source code available
 - re-distribution rights
- Arguably both of these are only of marginal benefit to end user
 - the majority of normal human beings are not going to edit Linux or re-distribute it
- Model relies upon copyright license

OSI Open Source Definition (1)

- (1) Free redistribution – no requirement for fee if sold or given away as component of an aggregate distribution
- (2) Source code – must include source code with product (or make readily available, e.g. over Internet)
- (3) Derived Works – must allow modifications, which can be distributed under same terms
- (4) Integrity – original plus patch files

OSI Open Source Definition (2)

- (5) No discrimination against people
- (6) No discrimination against field of use
- (7) No addition license
- (8) License not product-specific
- (9) License not restrict other software – e.g. cannot require that other software in distribution is open source
- (10) License is technology neutral

Open Source – End Users

- Free or cheap code
 - but may have to pay extra for service
- Freedom in use of code
 - e.g. can modify, correct bugs, etc
- No lock-in to single supplier
 - (from legal perspective at least)

Open Source – devt (1)

- Free or cheap code, readily available
 - cheaper and quicker than in-house development or obtaining third party proprietary code
- Access to source code allows easier product verification, integration and modification
 - can treat in effect as own code
- No lock-in to single supplier

Open Source – devt (2)

- Licensing terms for inwardly licensed code may or may not be appropriate for outgoing code
 - dependent on business model
- Outward OS license may be attractive
 - little or no downstream responsibility or cost
 - quick to market
 - can support other products (HW/SW)

Open Source – the risks (1)

- (Non)-Ownership of code
 - licensor may not have relevant rights, leading to possible third party exposure, e.g. SCO v IBM litigation
 - no indemnity
 - potential poor practice regarding IP
 - availability of source code can assist in third party attacks
- Lack of support (sometimes)

Open Source – the risks (2)

- Use of OS code may restrict own product licensing
 - e.g “viral” nature of GPL
 - potential conflict with business model
 - potential conflict with other license agmts; e.g. source code confidentiality
- More difficult to drive value from OS code
 - business models still being explored

Main Types of OS license - BSD

- BSD license
 - generally most permissive
 - “redistribution and use in source and binary forms, with or without modification, are permitted”
 - subject to main conditions: (a) “as is” (no warranty/disclaimer), and (b) propagate license
 - similar to MIT license

Main Types of OS license – BSD–like

- Many other licenses have similar broad terms to BSD including:
 - MIT
 - Apache - sort of BSD plus acknowledgement
 - W3C – sort of BSD plus details of any modification

Company OS licenses

- Tend to be much longer
 - written by lawyers
 - trying to protect alternative revenue streams
 - patent issues
 - often potentially interested in third party modifications to their original code
 - main terms often similar to Mozilla (Netscape)
- Versions by IBM, Sun, Nokia, etc

Apple OS license

- Can use, distribute original code
 - patent license to original code
 - limitations on outward license
- Can modify code
 - must make available source code of modifications
 - not necessarily covered by patent license

Computer Associates OS license

- “CA believes in open source. We believe that the OS devt approach can take appropriate sw programs to unprecedented levels of quality, growth and innovation.”
 - must include change listing with file
 - must notify of any required third party IPR

GNU Public License (GPL) (1)

- Most significant OS license
 - applies to 50% plus of OS products, including Linux (“GNU/Linux”)
 - v2 from 1991
 - strong motivation behind license to promote and ensure “free” software (“copyleft”)
 - half license, half philosophical treatise
 - “any free program is threatened constantly by software patents”

GPL (2)

- GPL allows modifications, copying, etc
- “Viral” effect – GPL must also apply to any code distributed that includes original GPL code
 - separate license to handle libraries (LGPL)
 - only triggered by distribution
 - includes requirement to make available source code

Working (or Not working) with GPL

- DON'T include GPL (or other code) in any product files without careful consideration and legal consultation
 - also applies to GPL product tools, e.g. compiler, that might leave code in product
 - otherwise may have to release source code of product, and provide product for free
- NB current litigation in US for violation of GPL

GPL version 3 (1)

- “Over the following 15 years [since GPL v2)], some members of the ... [OS] community came to believe that some software and hardware vendors were finding loopholes in the GPL, allowing GPL-licensed software to be exploited in ways that were contrary to the intentions of the programmers. These concerns included [tivoization](#) (the inclusion of GPL-licensed software in hardware that will refuse to run modified versions of it); the use of unpublished, modified versions of GPL software behind web interfaces; and patent deals between [Microsoft](#) and Linux and Unix distributors that may represent an attempt to use patents as a weapon against competition from Linux.” (Wikipedia)

GPL version 3 (2)

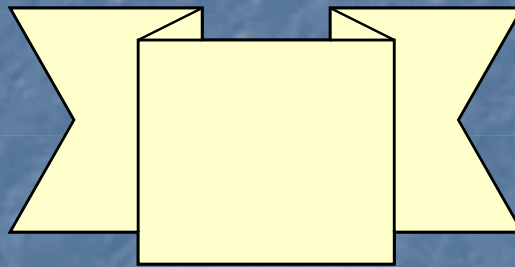
- Announced 29 June 2007 after long consultation program
- Does not apply retrospectively
 - in fact, incompatible with GPL2, since both demand that they apply to any overall product
 - but can have separate v2 and v3 programs in same distribution

Tivoization

- Tivo systems
 - based on GPL code; modifications made available on Web
 - but box would only run Tivo code (no further modifications permitted)
- GPL v3
 - s6 - “User Product” – intended for household use. MUST provide “Installation Information” to support the use of modified code

The End

- Thank-you



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