

IP Issues in Open Source

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Disclaimer

While I am a lawyer, I am not your lawyer and this is not legal advice. The contents of this presentation should not be taken as a replacement for legal advice from a qualified lawyer in your jurisdiction. 😊

Key Areas of Focus

Open Source

- What is Open Source?
- Open Source Licenses Explained

Doing your Homework

- Areas of Focus
- The Eclipse Example
- Distributors – Planning Ahead
- The Importance of Active Management

What is Open Source?

Determined by the License Characteristics.

Defined by the Open Source Initiative

<http://www.opensource.org/docs/osd>

1. Free Redistribution
2. Source Code
3. Derived Works
4. Integrity of The Author's Source Code
5. No Discrimination Against Persons or Groups
6. No Discrimination Against Fields of Endeavor
7. Distribution of License
8. License Must Not Be Specific to a Product
9. License Must Not Restrict Other Software
10. License Must Be Technology-Neutral

“Free Software”

- "Free software is a matter of the users' freedom to run, copy, distribute, study, change and improve the software. More precisely, it refers to four kinds of freedom, for the users of the software:
 1. The freedom to run the program, for any purpose (freedom 0).
 2. The freedom to study how the program works, and adapt it to your needs (freedom 1). Access to the source code is a precondition for this.
 3. The freedom to redistribute copies so you can help your neighbour (freedom 2).
 4. The freedom to improve the program, and release your improvements to the public, so that the whole community benefits (freedom 3). Access to the source code is a precondition for this.
 5. A program is free software if users have all of these freedoms.“

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

Grounded in Copyright Law

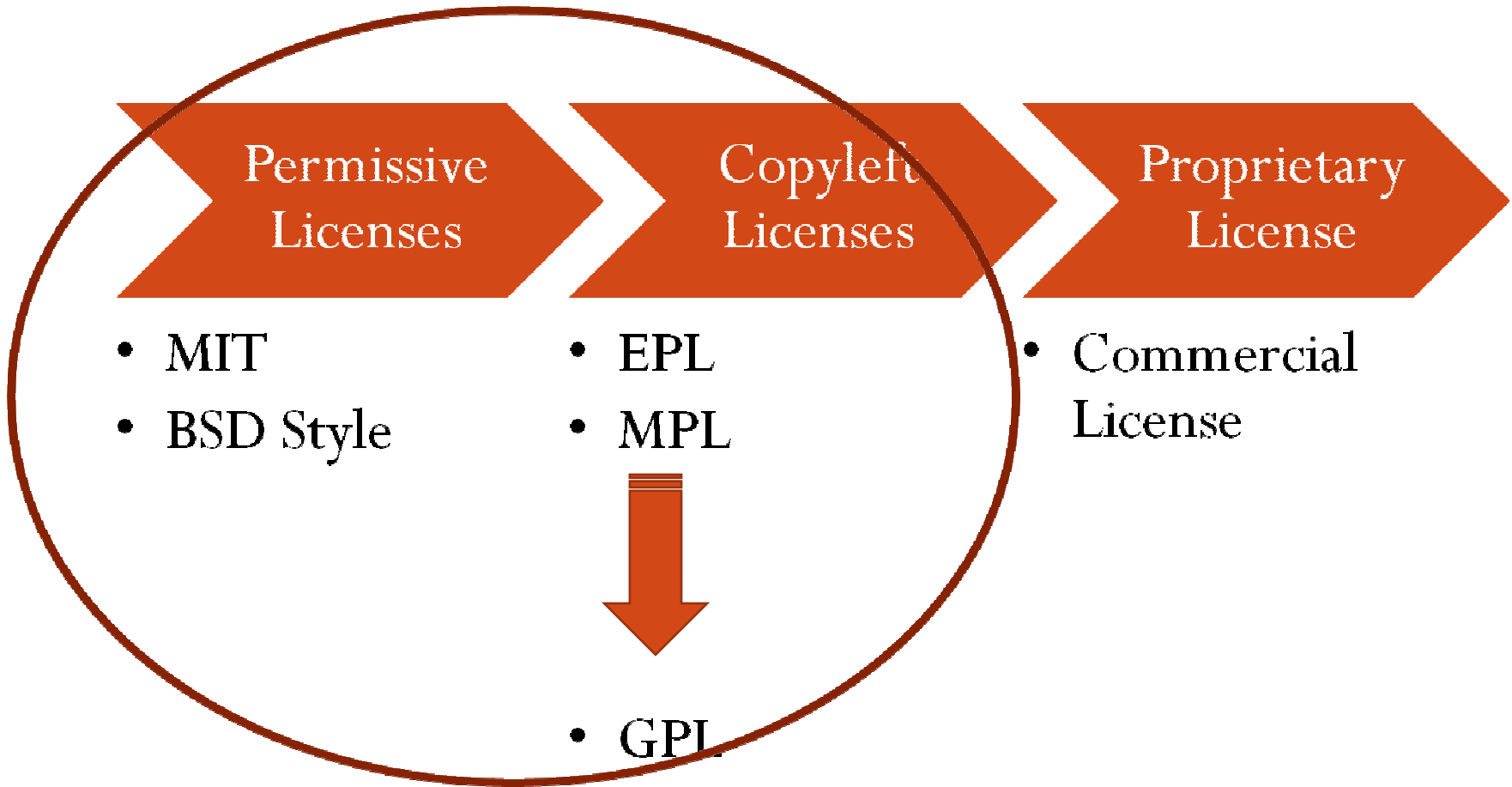
- Under **U.S. Law**, the following bundle of rights granted to the holder of a copyright:
 1. The exclusive right to copy the work;
 2. The exclusive right to make derivative works;
 3. The exclusive right to distribute the work;
 4. The exclusive right to perform the work; and
 5. The exclusive right to display the work.

§1-106, Title 17, U.S. Code.

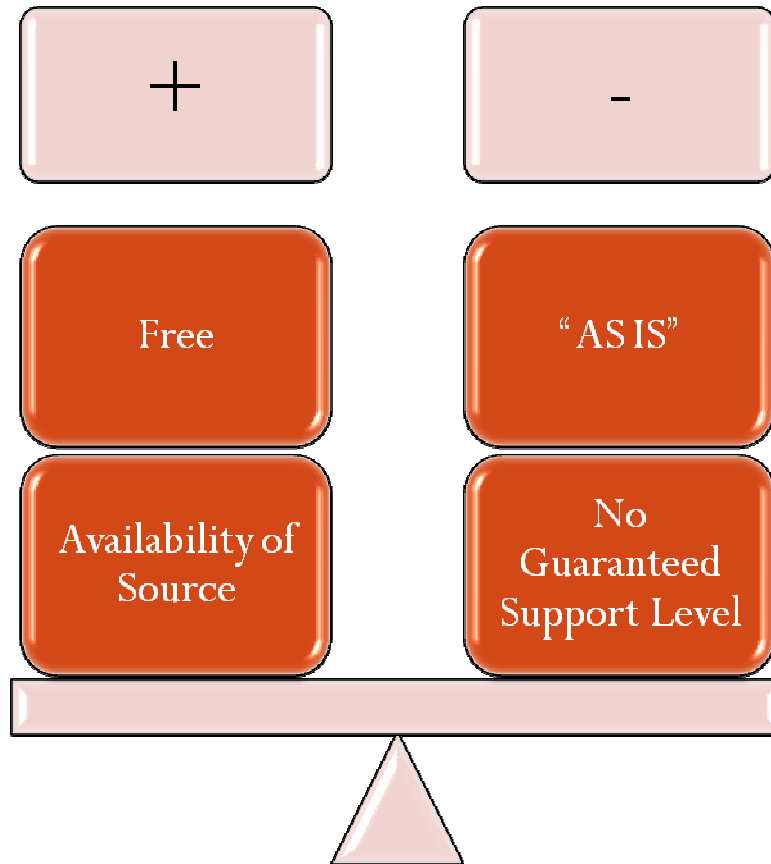
Other Terms Sometimes Included

- Express grant of applicable patent rights
- Disclaimer of warranties and liability
- Indemnification of copyright holders in the case of commercial distribution
- Terms affecting the redistribution of modified source code

The License Spectrum

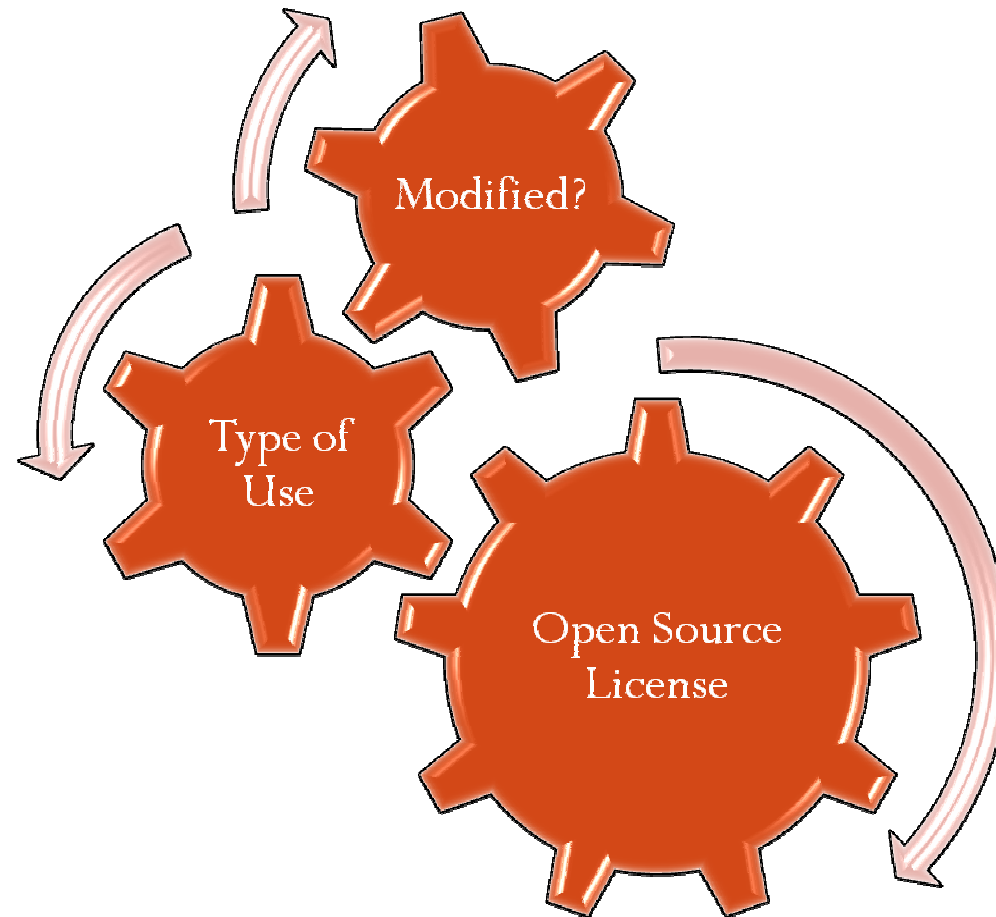


FLOSS License Characteristics



What are my (+)s and (-)s and how does it balance out for me?

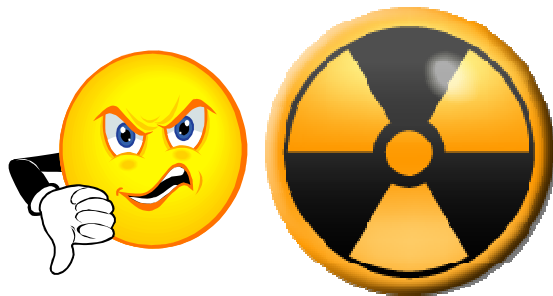
Does the License suit your use?



Type of Use

Internal Use

- Most open source licenses are well suited to internal use.
- Watch for Modifications to Popular Open Source Licenses



Type of Use

Distributed Use & Permissive License

- Generally do not pose any difficulties

Distributed Use & Copyleft License

- More careful review is required

Modified?

Code Structure?

Multiple license relationships?

Doing Your Homework

Areas of Focus



and Diversity of:

- 1) Project Team**
- 2) Adopters**



**Risk that the
Project will
“Disappear”**



License Compatibility

Pedigree

The Eclipse Example

Code Originates from Three Sources:

1. Contributions from Eclipse Committers
2. Contributions from Contributors
3. Contributions from third party sources (e.g. another open source project)

Securing the Necessary Rights

Committer Contributions

- Legal Agreements are entered into to secure the necessary rights to have the code included in Eclipse.
 - Member Committer Agreement
 - Individual Committer Agreement
 - If the Individual Committer is Employed – An Employer Consent Form
- Through these Agreements, the Committer agrees that the Eclipse Public License (EPL) governs the code submitted by the Committer.

Securing the Necessary Rights

Contributor Contributions

- All content must be submitted through any of the channels existing on the Eclipse Foundation website such as, the Bugzilla bug reporting system.
- This material is licensed to others under the terms of the Eclipse Foundation Terms of Use.
- The Eclipse Foundation Terms of Use define the license terms that apply to any intellectual property submitted to the Eclipse Foundation website.
 - Modifications to EPL code are governed by the EPL
 - Modifications to code governed by another license are governed by that other license and the EPL.

Securing the Necessary Rights

Contributor Contributions continued...

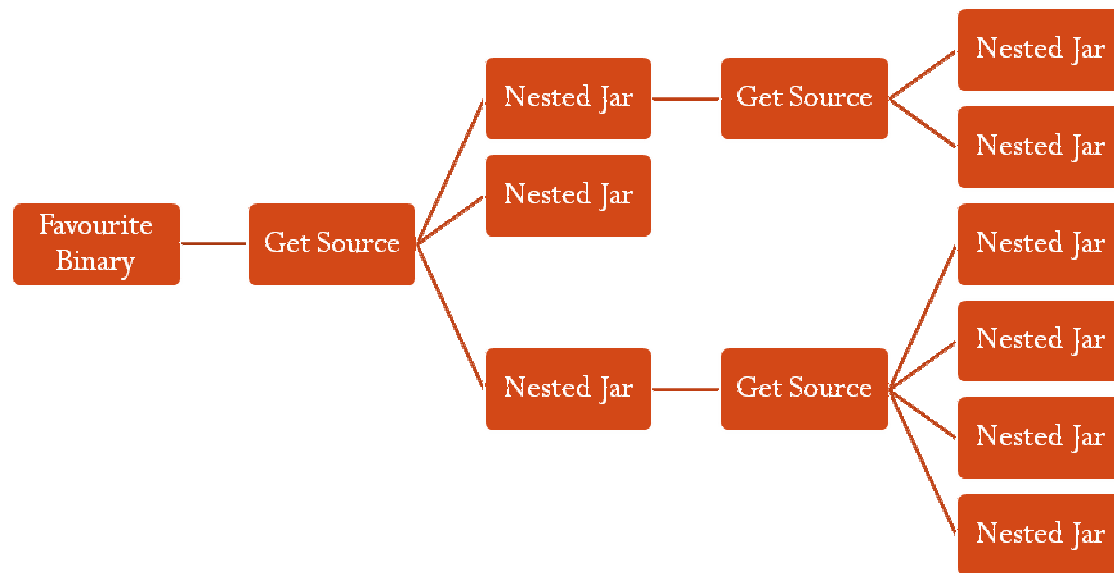
- For all other contributions...
 - “you grant (or warrant that the owner of such rights has expressly granted) the Eclipse Foundation, the Members and the users of this Web-site a worldwide, unrestricted, royalty free, fully paid up, irrevocable, perpetual, non-exclusive license to use, make, reproduce, prepare derivative works of, publicly display, publicly perform, transmit, sell, distribute, sublicense or otherwise transfer such Materials, and/or derivative works thereof, and authorize third parties to do any, some or all of the foregoing including, but not limited to, sublicensing others to do any some or all of the foregoing indefinitely.”

Third Party Contributions

- Third party contributions such as code originating from another open source project (e.g. www.apache.org) are licensed under the license terms that apply to that project.
- Eclipse completes due diligence on each of these packages.

Third Party Packages

- It is common for more material to be included in the distribution than is needed.
- Can we narrow the scope?



Example – Apache Muse 2.0

- Committer wanted to use Muse 2.0
- Grabs the binary – one file – set to go....
- Reads up on Muse 2.0 and finds that some of the functionality is dependent on Axis 2 Version 1.1.
- Committer grabs another binary.
- And now we have two – this is going to be easy

Muse 2.0 – 1st Level of Nesting

muse-2.0.0-bin\modules\axis2\muse-platform-axis2-2.0.0.jar
muse-2.0.0-bin\modules\core\muse-core-2.0.0.jar
muse-2.0.0-bin\modules\core\muse-util-2.0.0.jar
muse-2.0.0-bin\modules\core\muse-util-qname-2.0.0.jar
muse-2.0.0-bin\modules\core\muse-util-xml-2.0.0.jar
muse-2.0.0-bin\modules\core\muse-util-xstream-2.0.0.jar
muse-2.0.0-bin\modules\core\muse-wsa-soap-2.0.0.jar
muse-2.0.0-bin\modules\osgi\core\muse-core-2.0.0.jar
muse-2.0.0-bin\modules\osgi\core\muse-osgi-core-2.0.0.jar
muse-2.0.0-bin\modules\osgi\core\muse-osgi-soa-axis2-2.0.0.jar
muse-2.0.0-bin\modules\osgi\core\muse-osgi-soa-core-2.0.0.jar
muse-2.0.0-bin\modules\osgi\core\muse-util-all-2.0.0.jar
muse-2.0.0-bin\modules\osgi\core\muse-wsa-soap-2.0.0.jar
muse-2.0.0-bin\modules\osgi\ws-fx-api\muse-wsdm-muws-adv-api-2.0.0.jar
muse-2.0.0-bin\modules\osgi\ws-fx-api\muse-wsdm-muws-api-2.0.0.jar
muse-2.0.0-bin\modules\osgi\ws-fx-api\muse-wsdm-wef-api-2.0.0.jar
muse-2.0.0-bin\modules\osgi\ws-fx-api\muse-wsn-api-2.0.0.jar
muse-2.0.0-bin\modules\osgi\ws-fx-api\muse-wsrf-api-2.0.0.jar
muse-2.0.0-bin\modules\osgi\ws-fx-api\muse-wsx-api-2.0.0.jar
muse-2.0.0-bin\modules\osgi\ws-fx-impl\muse-wsdm-muws-adv-impl-2.0.0.jar

muse-2.0.0-bin\modules\osgi\ws-fx-impl\muse-wsdm-muws-impl-2.0.0.jar
muse-2.0.0-bin\modules\osgi\ws-fx-impl\muse-wsdm-wef-impl-2.0.0.jar
muse-2.0.0-bin\modules\osgi\ws-fx-impl\muse-wsn-impl-2.0.0.jar
muse-2.0.0-bin\modules\osgi\ws-fx-impl\muse-wsrf-impl-2.0.0.jar
muse-2.0.0-bin\modules\osgi\ws-fx-impl\muse-wsrf-rmd-2.0.0.jar
muse-2.0.0-bin\modules\osgi\ws-fx-impl\muse-wsx-impl-2.0.0.jar
muse-2.0.0-bin\modules\tools\muse-tools-2.0.0.jar
muse-2.0.0-bin\modules\ws-fx-api\muse-wsdm-muws-adv-api-2.0.0.jar
muse-2.0.0-bin\modules\ws-fx-api\muse-wsdm-muws-api-2.0.0.jar
muse-2.0.0-bin\modules\ws-fx-api\muse-wsdm-wef-api-2.0.0.jar
muse-2.0.0-bin\modules\ws-fx-api\muse-wsn-api-2.0.0.jar
muse-2.0.0-bin\modules\ws-fx-api\muse-wsrf-api-2.0.0.jar
muse-2.0.0-bin\modules\ws-fx-api\muse-wsx-api-2.0.0.jar
muse-2.0.0-bin\modules\ws-fx-impl\muse-wsdm-muws-adv-impl-2.0.0.jar
muse-2.0.0-bin\modules\ws-fx-impl\muse-wsdm-muws-impl-2.0.0.jar
muse-2.0.0-bin\modules\ws-fx-impl\muse-wsdm-wef-impl-2.0.0.jar
muse-2.0.0-bin\modules\ws-fx-impl\muse-wsn-impl-2.0.0.jar
muse-2.0.0-bin\modules\ws-fx-impl\muse-wsrf-impl-2.0.0.jar
muse-2.0.0-bin\modules\ws-fx-impl\muse-wsrf-rmd-2.0.0.jar
muse-2.0.0-bin\modules\ws-fx-impl\muse-wsx-impl-2.0.0.jar

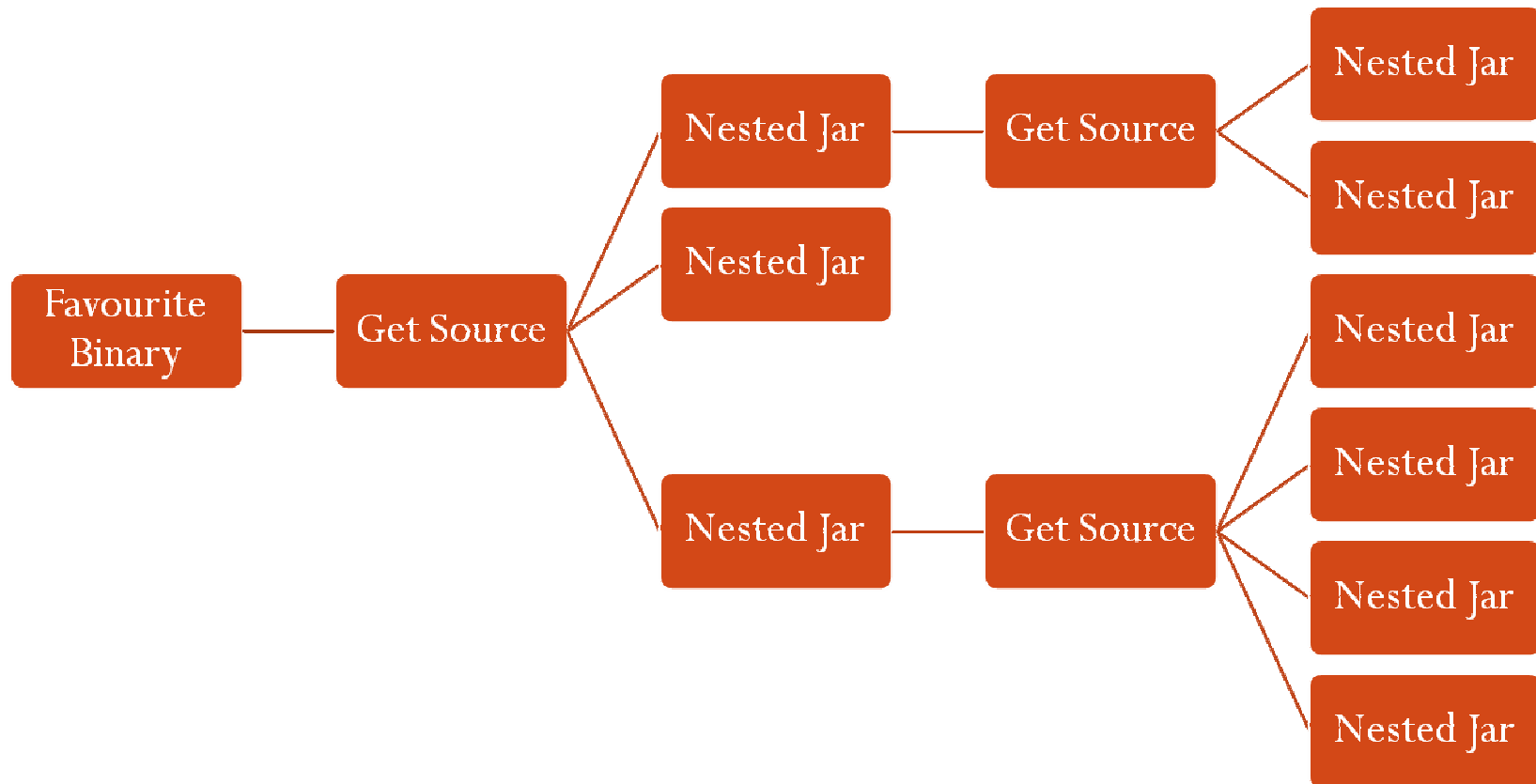
<http://www.apache.org/dist/ws/muse/2.0.0/bin>

Axis 2 v. 1.1 – 1st Level of Nesting

```
\axis2-1.1\lib\activation-1.1.jar
\axis2-1.1\lib\axiom-api-1.2.jar
\axis2-1.1\lib\axiom-impl-1.2.jar
\axis2-1.1\lib\axis2-adb-codegen-1.1.jar
\axis2-1.1\lib\axis2-java2wsdl-1.1.jar
\axis2-1.1\lib\axis2-kernel-1.1.jar
\axis2-1.1\lib\axis2-soapmonitor-1.1.jar
\axis2-1.1\lib\axis2-tools-1.1.jar
\axis2-1.1\lib\backport-util-concurrent-2.2.jar
\axis2-1.1\lib\commons-fileupload-1.1.1.jar
\axis2-1.1\lib\commons-io-1.2.jar
\axis2-1.1\lib\geronimo-spec-jms-1.1-rc4.jar
\axis2-1.1\lib\jaxen-1.1-beta-10.jar
\axis2-1.1\lib\jibx-run-1.1.2.jar
\axis2-1.1\lib\neethi-2.0.jar
\axis2-1.1\lib\stax-api-1.0.1.jar
\axis2-1.1\lib\wsdl4j-1.6.1.jar
\axis2-1.1\lib\xalan-2.7.0.jar
\axis2-1.1\lib\xercesImpl-2.8.1.jar
\axis2-1.1\lib\XmlSchema-1.2.jar
\axis2-1.1\lib\annogen-0.1.0.jar
\axis2-1.1\lib\axiom-dom-1.2.jar
\axis2-1.1\lib\axis2-adb-1.1.jar
\axis2-1.1\lib\axis2-codegen-1.1.jar
\axis2-1.1\lib\axis2-jibx-1.1.jar
\axis2-1.1\lib\axis2-saaj-1.1.jar
\axis2-1.1\lib\axis2-spring-1.1.jar
\axis2-1.1\lib\axis2-xmlbeans-1.1.jar
\axis2-1.1\lib\commons-codec-1.3.jar
\axis2-1.1\lib\commons-httpclient-3.0.1.jar
\axis2-1.1\lib\commons-logging-1.1.jar
\axis2-1.1\lib\jakarta-httpcore-4.0-alpha2.jar
\axis2-1.1\lib\jibx-bind-1.1.2.jar
\axis2-1.1\lib\mail-1.4.jar
\axis2-1.1\lib\servletapi-2.3.jar
\axis2-1.1\lib\woden-1.0.0M6.jar
\axis2-1.1\lib\wstx-asl-3.0.1.jar
\axis2-1.1\lib\xbean-2.2.0.jar
\axis2-1.1\lib\xml-apis-1.3.03.jar
```

http://ws.apache.org/axis2/download/1_1/download.cgi

Requirements are Identified



Eclipse Due Diligence

- The components that are identified as needed are submitted for review.
- Each component is examined from the standpoint of:
 1. Provenance
 2. License Compatibility
- We use tools to help us

How is Provenance Managed

*Who wrote this stuff
and how did they
agree to the license?*

ANTLR 3.0

Developers who are involved in ongoing development of ANTLR or contribute significant code, must sign and return a “Certificate of Origin” document (www.ANTLR.org).

ANTLR Project -- Developer's Certificate of Origin

From ANTLR v3 and StringTemplate onwards, all substantial and/or active contributors must sign and fax or snailmail a copy of the [ANTLR contributors certificate of origin](#) formally agree to abide by it by signing on the bottom with the date. An email address and your full name must be included.
Mail or fax to:

Terence Parr
University of San Francisco
2130 Fulton St, HR532
San Francisco, CA 94117
Fax: +1 415 422 5800

One-off contributions may be made through the [feedback page](#).

ANTLR 3.0 Cont...

Smaller contributors agree to the BSD electronically

Submission certification of origin and rights

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2. *I have the right to submit.* This submission does not violate the rights of any person or entity and that I have legal authority over this submission and to make this certification.
3. *If I violate another's rights, liability lies with me.* I agree to defend, indemnify, and hold The ANTLR Project and ANTLR users harmless from any claim or demand, including reasonable attorney fees, made by any third party due to or arising out of my violation of these terms and conditions or my violation of the rights of another person or entity.

I have read this and do so certify

SUBMIT **CANCEL**

License Compatibility

Consistency with Intended Use

Objectionable Terms

Terms that Present Potential Difficulties for
Downstream Consumers

Legal Incompatibility

We Use Tools to Help Us

- The Eclipse Foundation uses tools to assist with our review.
 - Keyword search tools
 - Code print matching tools

Two Small Words...

“I started designing internet applications in [year], **when I joined [Technology Company]**

..... Very soon, **when working on customer projects**, I introduced the concept of [concept].... I began developing a small generic framework I improved the framework as I moved on, from customer to customer.”

“Until it was time to **open source** it! ... As I spread the word about this framework within [Technology Company], several ... **other employees... began using it and making modifications...**

Another good reason [to open source it] was that I wanted to have feedback from the open source community and wanted to get help to improve it. Also, it was good to be able to provide to our customers a framework that would continue to evolve and be maintained even after we left the project.” [*Paraphrased from:*

<http://jakarta.apache.org/cactus/participating/contributors.html>]

What Possible Issues are Raised?

- Does the Technology Company have an ownership interest in the software?
- Do Technology Company's customers have an ownership interest in the software?
- Are there other authors involved and did they consent to distribute the code under the license identified?

Changes to Project License Terms

- Comfort with license terms vary
- Open Source Projects may change their license terms after a period of time.

Additional Licenses

- Additional Licenses may be found at the file level



Copied Material

- Is it re-licensed material?
 - Did the original license allow the re-licensing?
 - Is the license compatible?
- Have the terms of the original license been complied with?

Benefits to our Community

- Risk of legal liability is reduced.
- Risk of having code that is subject to restrictive terms included in the Eclipse code base is reduced.
- Risk of having to later remove code and re-work the code stack is also reduced.

Leveraging Completed Reviews

- Code is submitted for review via a separate instance of Bugzilla which we call IPZilla.
- Requests to use another project's code, concerns identified during review, specialized Eclipse distributions, approvals and rejections are all documented in a searchable database.
- The projects and select members can leverage code that had already been reviewed and approved.

Distributors – Planning Ahead

Re-distribution of Open Source

- Warranties, Representations, Indemnities
- Support

Choosing to Open Source your Code

- License is consistent with business model.



Active Management is Key

- Whether you are talking about proprietary software or open source software, it is important to know:
 - What you have
 - Where you have it
 - How it is being Used
- Set up a process to review any new additions (whether open source or not) and any proposed changes to existing use.



Questions?