

OSS licenses and the Eclipse Public License

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Before we
start

I am not a Lawyer

- This information is for **educational** and **debate** purposes only
- This information is **not legal advice** as I am not a lawyer
- Even if I were a lawyer, and able to give professional legal advice, **I am still not YOUR lawyer**
- This information is in **no way** to be considered advice **from my Employer**, even when I refer to my Community's license (EPL)
- This information is an anthology of experiences from one developer to another

A Little Bit of History

Free Software Movement

- launched 1983
- GNU project, FSF
- Copyleft, GNU Public License
- ethics based
- protect the 4 major rights of the end user



Richard Stallman, Wikipedia

Open Source Software

- 1997 - Cathedral and Bazaar
- 1998 - Netscape becomes Mozilla
- 1998 – Open Source Initiative
- Pragmatic approach to solving issues with software
- Apache project, APL



Eric S. Raymond, Wikipedia

Change of Tides



By **Paul Krill** | [Follow](#)

InfoWorld | Mar 16, 2004

SANTA CLARA, Calif. -- A Microsoft official Monday questioned how the software industry could survive if users are getting software for free through open source.

For-profit software companies will struggle for a business model against free software, said the official, Microsoft

Distinguished Engineer pertaining to software the Software Developer show here on Monday



Ralph Mueller @ralph_mueller · Nov 14

Microsoft: .NET wird komplett Open Source - heise Developer heise.de/developer/meld...



[View summary](#)

Heise Developer, 2014

The Open Source Definition

OSI Definition of an Open Source License (1/2)

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1. Free Redistribution

- The license shall not restrict any party from selling or giving away the software as a component of an aggregate software

2. Source Code

- Must include source code, and must allow distribution in source code as well as compiled form.

3. Derived Works

- Must allow modifications and derived works, and must allow them to be distributed under the same terms as the license of the original software.

4. Integrity of Authors Source Code

- The license may restrict source-code from being distributed in modified form only if the license allows the distribution of "patch files" with the source code for the purpose of modifying the program at build time.

5. No discrimination against person or group of persons

- The license must not discriminate against any person or group of persons. Can warn of legal constraints such as trade embargos, but not explicitly forbid

OSI Definition of an Open Source License (2/2)

6. No discrimination against fields of endeavor

- The license must not restrict anyone from making use of the program in a specific field of endeavor

7. Distribution of license

- The rights attached to the program must apply to all to whom the program is redistributed without the need for execution of an additional license by those parties

8. License Must be Not Specific to a Product

- The rights attached to the program must not depend on the program's being part of a particular software distribution.

9. Must not restrict other software

- The license must not place restrictions on other software that is distributed along with the licensed software.

10. Technology Neutral

- Cannot restrict use to certain platforms (Windows™ for example)

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Intellectual Property Law applied to Software

Who owns the Copyright ©

- Most programmers **do not own the right to any code they write**, their Employer does!
- Most Employment Contracts contain something like the following:

*You hereby agree to **assign to the Corporation all right, title and interest** in and to any and all Inventions whether or not patentable or registrable under copyright or similar statutes, made or conceived or reduced to practice or learned by you, either alone or jointly with others, during your employment, which (a) relate to methods, apparatus, designs, products, processes or devices sold, leased, used or under construction or development by the Corporation, or otherwise relate to or pertain to the actual or anticipated business, functions, operations, research or development of the Corporation, (b) utilize any physical or intellectual property owned by the Corporation, or (c) are based on any information or knowledge gained by you through your employment with the Corporation.*

This is a really big issue for Open Source projects.....

Copyrights Versus Patents

- Copyrights protect a **specific expression** of an idea
- Patents protect an **idea itself**

- How evil could this be:
 - As a Copyright holder you grant people the **right to copy** and create **derivative works** of your code

 - But do **NOT** give them the rights to your Patent for **the idea the code represents!**

Derivative Works

- “...**a work based on one or more preexisting works**, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or **any other form in which a work may be recast, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications**, which, as a whole, represents an original work of authorship, is a ‘derivative work’”
 - Section 101 of U.S. Copyright Act
- **Derivative works are not considered original creations**
- **They are considered *copies* of the original and you therefore need permission to display, distribute, etc., the derivative work**

Key Characteristics of Software License

- Definitions
 - Grant of Copyright License Rights
 - Warranty and Liability
 - Jurisdiction and Duration
- Fairly standard legal mumbo jumbo**
- Sublicensing
 - Reciprocity
 - Patent Rights
 - Patent Retaliation
 - Use of Trademarks
- Differentiating Factors**

What makes a Software License

an *Open Source Software License*?

Key Characteristics of Software License

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Fairly standard legal mumbo jumbo

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Differentiating Factors

Definitions

- Defines **important terms** used within the license
- May seem trivial, but the definitions are often “telling” of **what is important in the license**
- May define terms that are used in applicable laws
 - Many licenses clarify the term “Derivative Works”, which is defined in law, but expanded for clarification specific to software
- May define terms that are interesting to the license
 - Community based licenses like Apache and Eclipse define “Contribution” and “Contributor”

Grant of Copyright License Rights

- Sometimes called “Grant of Copyright License” or “Grant of Rights”
- Grants you rights you do not have under Copyright law such as the right to copy, create derivative works, to redistribute, etc.
- There may be conditions, such as “Reciprocity” (more later)
- This is often short and sweet

From Apache 2.0 license:

Grant of Copyright License: Subject to the terms and conditions of this License, each Contributor hereby grants to You a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable copyright license to reproduce, prepare Derivative Works of, publicly display, publicly perform, sublicense, and distribute the Work and such Derivative Works in Source or Object form.

Warranty and Liability

- YOU MAY NOTICE SECTIONS OF LICENSES THAT SEEM LIKE THEY ARE YELLING
- THEY BASICALLY SAY, “HEY THERE, YOU DIDN’T PAY FOR THIS SO THERE IS NO WARRANTY, AND YOU CAN’T SUE US IF IT BREAKS, OK? AND ALSO WE ARE NOT LIABLE FOR ANYTHING BAD THAT HAPPENS, EVEN IF WE INTENTIONALLY DID SOMETHING WRONG TO THE EXTENT AFFORDED BY LAW.”
- NOTE – THE YELLING IS NOT BEING RUDE, OR LAWYERS BEING LAWYERS – IT’S ACTUALLY A COURT PRECEDENT THAT IT BE ALL IN UPPER CASE

Confirmed in: UCC 2-316; UCC 1-201(10); Amendments to rules of court, Virginia Supreme court Nov 1, 2002

Jurisdiction and Duration

- Some licenses specify a legal jurisdiction and terms
- Generally a simple way to further minimize any possible legal risks
 - Location
 - Timeline
 - Type of trial
- For example, the EPL 1.0 stated:

This Agreement is governed by the laws of the State of New York and the intellectual property laws of the United States of America. No party to this Agreement will bring a legal action under this Agreement more than one year after the cause of action arose. Each party waives its rights to a jury trial in any resulting litigation.

**Deleted
in EPL 2.0**

Key Characteristics of Software License

- Definitions
- Grant of Copyright License Rights
- Warranty and Liability
- Jurisdiction and Duration

Fairly standard legal mumbo jumbo

- Sublicensing
- Reciprocity
- Patent Rights
- Patent Retaliation
- Use of Trademarks

Differentiating Factors

Grant of Sublicense Rights

- **Sublicense** – Licensee has right to license to 3rd party with same terms
- **Relicense** – Ability to distribute under different license
- Examples
 - **Apache** and **Eclipse** allow **sublicense**
 - Apache allows **full relicense** of your changes
 - Essentially you own the copyright of derivative works
 - **Eclipse** allows **relicense of object** code with disclaimers
 - Each distribution of **GPL** code is technically a license from the Author, so technically **not sublicensed**



Copyleft

Reciprocity

- The exchange of comparable concessions
- File, Module, Derivative Works, Hosting, Container, Bitmaps, ...
- “Reciprocity Reach” – The extent to which your derivative works must be licensed under the same terms and conditions
 - Apache 2.0 – No Reciprocity
 - EPL 2.0 – No Reciprocity on modules that are not derivative works
 - GPL 2.0 – Reciprocity on derivative works and “collective works”
 - “Collective works” not explicitly defined, software “based on the Program”

Patent Rights and Retaliation

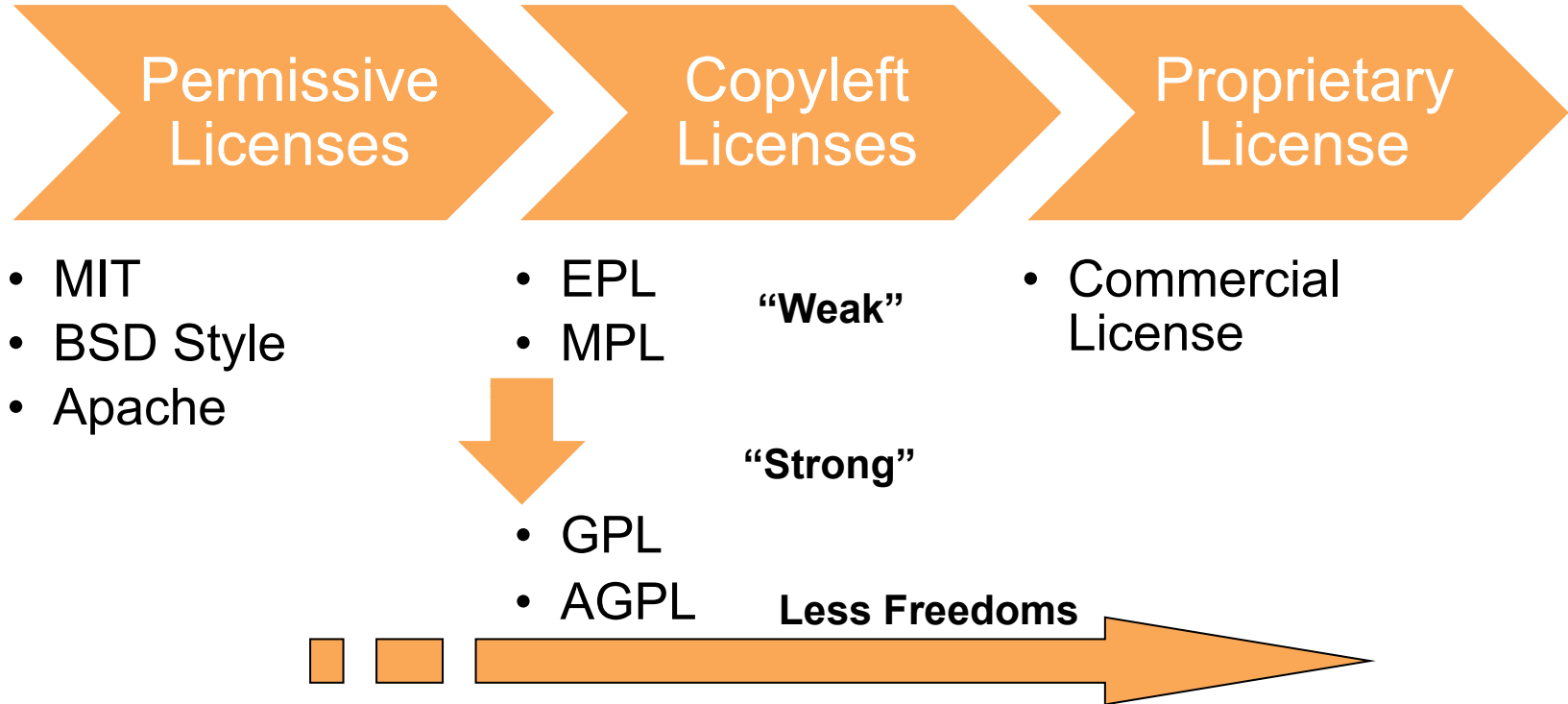
- Many licenses explicitly grant you rights to any patents the Copyright holders may have with respect to the code (Apache, EPL)
- Some licenses have implicit patent grants (GPL)
- Many licenses terminate the patent grants if you sue for patent infringement on any of the licensed code
 - EPL and Apache Patent rights explicitly terminate upon suing any entity related to the licensed code
 - GPL Patent rights implicitly terminate upon restricting royalty-free distribution of any GPL code

Use of Trademarks™

- Some licenses (Apache) explicitly clarify that the license does not permit the use of the trademark except as to document the origin of the source code as per the license requirements
- The PHP License explicitly defines how products that use PHP cannot be named
- Some licenses (EPL) do not mention trademarks in the license and therefore default Trademark law applies
 - This is intentional to allow Trademark flexibility outside of the scope of the use of the license

Comparison of popular OS Licenses

The License Spectrum



“Permissive” Licenses



- “Permissive” or “Non-Copyleft” Free software comes from the author with permission to redistribute and modify, and add additional restrictions to the license terms.
 - A subsequent party can modify the non-copyleft free program and distribute the modified program as a proprietary software product, without making the source code available to others on the same terms.
 - E.g., BSD License, Apache

“Copyleft” Licenses



- *Copyleft* requires **all modified versions** of the program to be provided **under the same license** as the original software was obtained.
- The impact of copyleft varies from license to license:
 - Under the Eclipse Public License (EPL), the copyleft requirement only applies to that which is **in the same module as the EPL code** or that which is otherwise a “derivative work” of the EPL code as defined by copyright law
 - Under the GPL 2.1, merely “linking” GPL code with other code may require that the other code (and the combination) **be licensed under the GPL**.
- The EPL is a **weak copyleft** license and by design commercially friendly.
 - Allows for commercial re-licensing
 - Includes patent licenses

Commercial Software Licenses

Permissive
Licenses

Copyleft
Licenses

Proprietary
License

- Commercial Software often imposes extra restrictions on users that are not covered by Intellectual Property law
 - Agreement **not to disassemble** or **reverse engineer**
 - Agreement to use on **only one computer**
 - Agreement **not to transfer** or **resell** your license to another entity
 - Agreement to allow software to **report usability metrics periodically**
 - Agreement **not to rent or lease** the computer with the software
 - Agreement to **notify all staff and users** of computer of all rules of the software license

Comparing Three Popular OS Licenses

More at https://en.wikipedia.org/wiki/Comparison_of_free_and_open-source_software_licenses

	Apache v2 (Permissive)	EPL v1/2 (Weak Copyleft)	GPL v2 (Strong Copyleft)
Reciprocity	None	Derivative Works	Derivative works and anything that cannot be “reasonably considered an independent and separate work”
Sublicense	“may provide additional or different license terms and conditions of Your modifications”	Re-license of Object code permitted	None, license is virtually granted from author on each distribution
Patent Rights	Explicit	Explicit	Implicit
Patent Retaliation	Rights terminate if you file suit against any entity for the code		Rights terminate if you prevent royalty free distribution of the code
Trademark	Explicitly disallowed	Not covered	Not covered

This slide is not legal advice and is subjective. IANAL.
Consult your trusted advisors before basing any decisions on this chart.

Some references

- <http://opensource.org/docs/definition.php>
- <https://www.apache.org/licenses/LICENSE-2.0>
- <https://www.gnu.org/licenses/gpl-3.0.en.html>
- <https://www.eclipse.org/org/documents/epl-2.0/EPL-2.0.html>
- <https://www.eclipse.org/legal/epl-2.0/faq.php>

Based on work from

- Mike Milinkovich
- Janet Campbell
- Gael Blondelle
- Ralph Mueller
- And more...

Thank You!

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