

Anatomy of a Software License: *Licenses in the Open*

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Topics Outline

- What is “open source” software?
 - Characteristics of an open source license
 - Types of open source licenses
 - Common OS licenses
 - Common clauses in OS licenses
- What are the advantages/ disadvantages of open source software?
 - Business and technical advantages
 - Legal risks
- How prevalent is open source software?

[What is “open source” software?]

- Software licensed under an “open source” (OS) license
- Characteristics of an OS license
 - Access to source code (free or at cost)
 - License to modify, create derivatives, distribute
 - No warranties/ no liability for authors
 - Some element of self-perpetuation / obligations
- NOT public domain
 - Public domain disclaims copyright interests by donating to the public at large
 - No obligations attach to public domain software

[What is “open source” software?]

- Types of OSS license:
 - *GPL-type* – applies to derivative works, and sometimes more (linked works, specially designed works, as in GPL v3)
 - *BSD-type* – applies only to original program code, and sometimes to modifications applied to that code, but not to derivative works



[What is “open source” software?]

- **Commonly Used OSS licenses**

<http://opensource.org/licenses/alphabetical>

- Apache 2.0
- BSD (New and Simplified)
- Common Development and Distribution License
- GPL v2, v3
- LGPL
- IBM Public License
- MIT License
- Mozilla
- Microsoft Public License (?!)

[Common clauses in OS licenses]

- **Access to source code:**

“Any Covered Software that You distribute or otherwise make available in Executable form must also be made available in Source Code form and that Source Code form must be distributed only under the terms of this License. You must include a copy of this License with every copy of the Source Code form of the Covered Software You distribute or otherwise make available. You must inform recipients of any such Covered Software in Executable form as to how they can obtain such Covered Software in Source Code form in a reasonable manner on or through a medium customarily used for software exchange”

----- *Common Development and Distribution License V.1.0*

[Common clauses in OS licenses]

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---- Apache License v2.0

[Common clauses in OS licenses]

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----- Simplified BSD License

[Common clauses in OS licenses]

- Some element of self-perpetuation / obligations

“You may convey a covered work in object code form under the terms of sections 4 and 5, provided that you also convey the machine-readable Corresponding Source under the terms of this License...” ---- “A “covered work” means either the unmodified Program or a work based on the Program.”

---- *GNU General Public License v3*

[Advantages/ disadvantages?]

- Business and technical
 - Faster, cheaper, stronger
 - Speeds development cycles
 - Peer review, community debugging
 - Revenue models have limits

Advantages/ disadvantages?

- Legal risks
 - Inadvertent forced disclosure of source code - reach of OS licenses to derivatives and sometimes more (GPL v3)
 - Specially designed to operate with GPL
 - All the code needed to modify and rebuild
 - Whether or not linked
 - Litigation
 - Forced compliance with OS licenses
 - Injunction stopping shipments
 - Monetary settlements
 - Infringement suits

Advantages/ disadvantages?

Litigation has been increasing

- 2007- 2010 -Software Freedom Law Center (SFLC)
www.softwarefreedom.org actively enforces OS licenses on behalf of authors
 "We provide legal representation and other law-related services to protect and advance Free, Libre and Open Source Software (FLOSS)."
- SFLC filed suit on behalf of BusyBox against:
 - Cisco
 - Verizon Communications
 - Monsoon Multimedia
 - Xterasys Corporation
 - Best Buy Samsung
 - Westinghouse
- 2010 – TurboHercules anti-trust suit against IBM in France (anticipating IBM patent infringement suit)
- Most end in settlements that force compliance and donations

How prevalent is OS software?

Most prevalent OSS
packages >>>>>

The Open Source Census Summary:

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449,385 Installations Found
3,284 Machines Scanned
778 Unique Packages Found
58 Unique Packages Per Enterprise

Rank	Package	Installs	Prevalence
1	firefox	3322	80%
2	zlib	2693	65%
3	wget	2600	62%
4	xerces	2258	54%
5	commons-logging	2184	52%
6	prototype	2178	52%
7	xalan	2135	51%
8	lucene	2063	49%
9	docbook-xml	1468	49%
10	commons-lang	2020	48%
11	eclipse	2009	48%
12	activation	1959	47%
13	javamail	1871	45%
14	samba	1333	44%
15	tk	1326	44%
16	wSDL4j	1824	44%
17	junit	1814	43%
18	openssl	1813	43%
19	openoffice	1792	43%
20	hsqldb	1787	43%

Guess who loves open source?

“We recognize that today’s technology users have diverse needs that neither a single vendor working alone, nor any one way to make software, are likely to meet. Thus, under conditions where developers, end users, and technology entrepreneurs make choices based on their goals—such as value for cost, productivity, or economic opportunity—the additional options for software development and distribution commonly associated with open source are constructive and welcome additions to the “tools in the toolbox.”

---- from “Participation in a World of Choice, Perspectives on Open Source and Microsoft”, a White Paper © 2009 **Microsoft Corporation**