
Preamble

In February 1989, Richard Stallman first released his GNU project software for UNIX under version 1.0 of the GNU General Public License (GPL). In June of that same year, Bill Joy first released a free version of UNIX software under the University of California's Berkeley Software Distribution (BSD) license. These relatively quiet events signaled a new era in software licensing. Almost imperceptibly at first, but with increasing speed and energy, this licensing revolution, now widely referred to as open source, spread around the world.

By the first year of this century, approximately 17,000 open source projects were active on the SourceForge servers (www.sourceforge.org). Four years later there are over 74,000 such projects and more than 775,000 registered SourceForge users. The majority of that open source software is currently licensed under the GPL or BSD licenses; the rest use one of about fifty other licenses based on the same open source principles.

Open source is now dominating many of the market conversations in the software industry. While software companies continue to release valuable and high-quality products under

proprietary licenses, most are also embracing open source product development and distribution models as well as the software licenses that make those models possible.

This book is about the law but it is not written for lawyers. You will not find citations to case law or rigorous academic analyses suitable for publication in a law journal. This book is written for my friends in the open source community who write and distribute software and who are confused about which licenses to use. It is also written for our customers who are concerned about how software licenses may affect them and their businesses. It seeks to dispel myths and fears about open source software licensing and to explain the legal context in which open source software exists.

Open source is built upon a foundation of intellectual property law, particularly copyright law. Open source software is owned by its authors, who license it to the public under generous terms. Open source licenses do not seek to destroy or steal intellectual property. The first chapters of this book explain the intellectual property laws that make open source licensing possible.

The following chapter describes the first broad category of open source licenses, what I call academic licenses to acknowledge their heritage in universities. These academic licenses allow software to be used, copied, modified, and distributed, even with proprietary software—and their source code is included. These licensors generously donate their software to the public for use by anyone.

The GPL—and the MPL, CPL, and OSL licenses that followed it—strike what I call a reciprocal bargain. Licensor and licensees share a public commons of open source software, but any modifications to that software must be distributed under

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the same license. These four licenses are much more complex than the academic licenses and so I devote a chapter to each of them.

Choosing a license to apply to your open source software is not an easy decision and so I devote an entire chapter to it. The answer depends intricately upon your business model, on your software and product architecture, and on understanding who owns the intellectual property in your products. If you expect a checklist method to select a license, don't bother reading this chapter; it cannot be so easy.

Eventually, a licensor or licensee may need to enforce the terms and conditions of an open source license. I devote an entire chapter to satisfying the curiosity of those who may want to sue—or who are afraid of being sued—under an open source license.

Finally, I begin to address a potentially bigger issue than open source. Open standards are really the battlefield on which we will determine whether software can truly be free and open. That topic deserves a book of its own someday; this isn't it, but I'm making a start.

Turning a software license into interesting reading is probably an insurmountable challenge. There is no other way than reading the words of a license to understand what it means. And so, for those of you who won't actually plod your way through the detailed explanations of licenses herein, I want to give you the conclusion.

As a user of open source software you may go forth and live free. None of the licenses in this book restricts in any way your use of open source software.

But if you are more directly involved in the creation, modification, or distribution of software, or if you manage or advise the in-licensing of software into your company, you should at the very least consult your attorney to make sure you don't commit to more than you're willing to deliver. This book may help you ask your attorney the right questions.