



O'MELVENY & MYERS LLP

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Open Source Software Licensing: What Every Technologist Needs to Know
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Foundations of Open Source



What is Open Source Development?

Cathedral



Bazaar

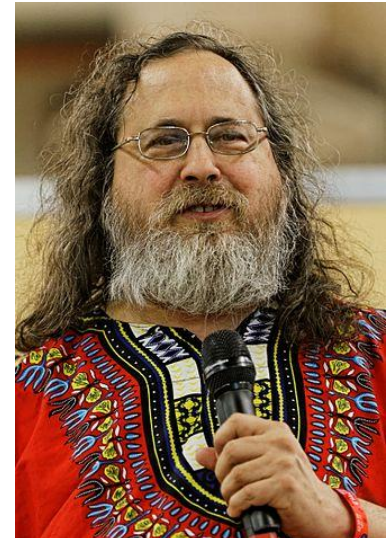


<http://www.catb.org/esr/writings/cathedral-bazaar/>



RMS v. the Xerox 9700

- Richard M. Stallman, a staff software programmer at the MIT AI lab, and, had trouble with a printer.
- The printer was a prototype from Xerox with a tendency to jam. When it jammed, print jobs stacked up.
- Stallman wanted to insert a software command into the printer software that ordered his computer to check the printer periodically and report back with a message if the printer was jammed.
- But the software in the printer was only in obje format.
- Xerox would not share the source code.



And then Mr. Stallman wrote the GPL...

For the full story, see <http://www.oreilly.com/openbook/freedom>





Open Source Is Not New

- **Development of UNIX at AT&T Bell Labs**
- **Open source release**
- **Privatization**
- **The search for a UNIX successor**



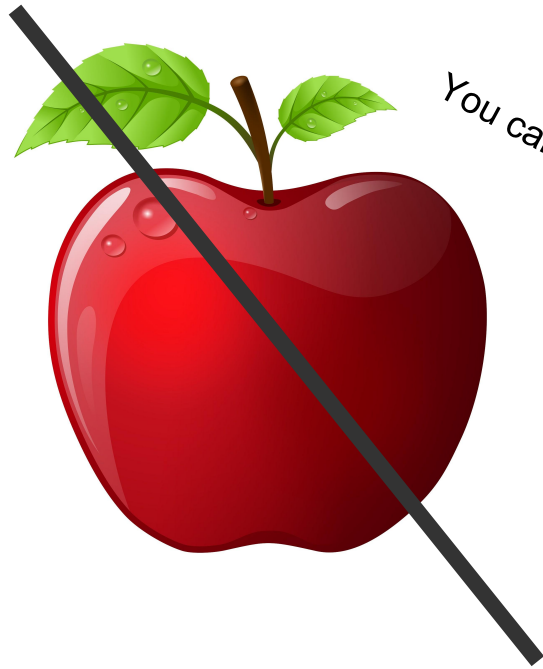
What is Open Source Licensing?

- **Terms of art**
 - **Copyleft**
 - **Not public domain**
 - **Not a “virus”**
 - **Open Source**
 - **Proprietary**



What is Open Source Licensing?

Unrestricted licenses with conditions



You can look, but not eat!

You can eat, but you must share!





The Open Source Licenses



Copyright Rules

- **Open Source Initiative has approved over 80 licenses, but almost all OSS is under these:**
 - **GPL**
 - **LGPL**
 - **BSD**
 - **MIT**
 - **Apache 2.0**
 - **Eclipse Public License, CDDL, Mozilla Public License**



Two Philosophies: Open Source and Free Software

- **Permissive software = MIT, BSD, Apache**

- If you distribute, provide notice

Free software = GPL

- If you distribute, use the same terms
- If you distribute, provide source code



GNU





Copyright Rules

- **GPL -- Strong copyleft**

- If any code in a program is GPL, it must all be GPL (all or none)
- This means no “linking” to proprietary code

- **LGPL -- Weak copyleft**

- If any code in a library is LGPL, it must all be LGPL
- But you can dynamically link to proprietary code



Derivative Works

- **“Derivative work”**
 - Mostly a red herring
 - If you put GPL code in a program, the entire program (including the GPL portion) is a derivative work of the GPL portion



Linking

- **Static v. Dynamic Linking**
 - Only matters to LGPL
 - Many languages do not use the concept of linking
 - GPL/LGPL were written for C/C++ programming, i.e. the Linux kernel



Top Questions in Open Source Licensing



Top Questions in Open Source Licensing

- **What is distribution?**
- **If I release my software under an open source license, what happens to my patents?**
- **How do I put notices on my product?**
- **What is a “derivative work”?**



What is Distribution?

- **Distribution is transferring a copy from one legal person to another**
- **Most open source licenses impose no conditions absent distribution**
- **For most licenses, SAAS is not considered distribution**
- **Exceptions:**
 - **Affero GPL (AGPL)**
 - Open Software License
 - Non-Profit Open Source License
 - Academic Free License
 - Artistic 2.0
 - Apple Public Source License
 - RealNetworks Public Source License
 - Reciprocal Public License

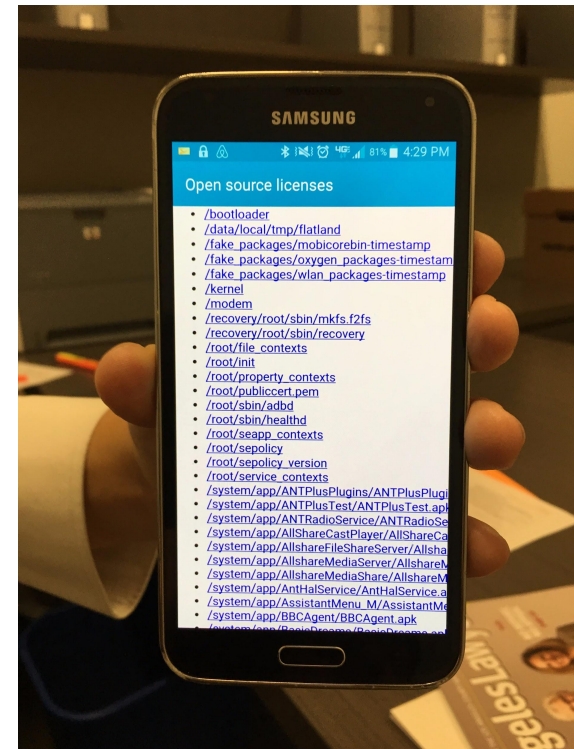


What about Patents?

- **Some open source licenses include express patent licenses**
 - **Apache 2.0**
 - **GPL3**
 - **Some open source licenses say nothing about patents**
 - **BSD**
 - **MIT**
 - **GPL2**
- Either way, releasing open source code can limit your patent rights.**

How to do Notices?

- Use the rules of GPL -- they work for most licenses
- Notices must be delivered with the product
- Delivering source code upfront is easiest
- If not, create a notice file





What is a “derivative work”?

- That is not the right question
- The right question is: how do I comply with GPL?
- Short answer: All code in a single executable process (i.e. a “Program”) must be either all GPL or no GPL.



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For your ample free time...

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