



Java. Cloud. Leadership.

## Choosing the right open source licence

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# What you're about to hear

- Here representing Red Hat legal minds
  - Follow on call/meeting possible
  - Credit to Richard Fontana@Red Hat



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# Richard ...

- Specialised in open source legal issues since 2005
- 2005-2008: Counsel at Software Freedom Law Center
- Worked mainly on GPLv3 license family for FSF
- Lawyer at Red Hat since 2008 (except for stint at HP), currently Senior Commercial Counsel
- Board Director of Open Source Initiative since 2013



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# About OSI

- 501(c)(3) tax-exempt nonprofit founded in 1998
- Formed to educate about and advocate for the benefits of open source and to build bridges among different constituencies in the open source community
- OSI is steward of Open Source Definition; reviews and approves licenses as OSD-compliant
- Individual and Affiliate memberships available!



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# Copyright

- Ownership interest in expressive aspects of original works of authorship
- Very long duration (life of author + 70 years)
- Exclusive rights: reproduce, distribute, prepare derivative works, publicly perform, publicly display
- Can be transferred ("assigned") or licensed
- Software (even object code) is copyrightable "literary work"

# What's a licence?

- Grant of permission to exercise some of your exclusive rights, typically subject to conditions
- A license is a defense to infringement
- Not all uses of copyrighted material require a license
- Typical "proprietary" software licenses are complex and severely restrictive

# Open source licences

- OSI view: licenses that satisfy the Open Source Definition and are certified by the OSI
- Common legal features
  - Royalty-free license grant covering all exclusive rights
  - Perpetual (subject to termination for violation)
  - Internal use effectively unrestricted
  - Reasonable, customary conditions may apply to distribution
    - Notice preservation
    - Source code availability
    - Copyleft requirements
- License not enough - source code access needed



# Open Source Definition

- Royalty-free; license must allow you to sell/give away
- Access to source code
- License must allow derivative works
- License can require distribution of modifications as diffs; can require derivative works to have different name
- No discrimination against persons or groups
- No discrimination against fields of endeavour
- No need to execute additional license
- License must not be product-specific
- License must not restrict other software
- License must be technology-neutral



# What's not open source?

- "Free for noncommercial use"
- "GPLv2 for non-military purposes"
- Binary-only freeware
- If a license seems open source-like, but you have never heard of it before, be cautious
  - See if it is OSI-approved
  - See if FSF has classified it as "free"

# Licence categories

- Copyleft
  - Strong (GPLv2, GPLv3, AGPLv3)
  - Weak (LGPL, MPL, EPL)
- Permissive (MIT, BSD, Apache License 2.0)

# Copyleft

- Originates with GPL
- Original goal: discourage proprietary, binary-only modifications of public domain code
- GPL implementation:
  - Derivative work, if distributed, must be licensed under the same license
  - Distributor of binary must provide/offer complete corresponding source code
  - No further restrictions

# Strong copyleft

- Goes to meaning of "derivative work": when distributing combination of GPL and non-GPL code, how much if any of the non-GPL code is subject to the GPL?
- Related question: if distributing a binary, how much source code do you have to provide?
- Community interpretation: scope assumed to be broad
  - Improvements/extensions/enhancements will probably be seen as derivative works, unless there is a good argument for "mere aggregation"

# Weak copyleft

- Originated in community criticism of FSF's application of GPL
- LGPL:
  - Applications using LGPL libraries can be proprietary
  - LGPLv2.0/2.1 highly complex
- MPL: "file-scoped" copyleft; no implications for "Larger Work"; binary can be under other terms
- EPL: generally seen as more like MPL than GPL
- Policy compromise: preserve open source core, but signal that proprietary extensions are okay

# Permissive

- Predate GPL but associated with reaction against GPL
- Notice preservation conditions (similar to GPL)
- No counterpart to copyleft conditions
  - No source availability requirements
  - No restriction on licensing of derivative works
- Reasons chosen by projects
  - Ideological (as with GPL)
  - Maximize adoption
  - Popularity in particular ecosystems/communities

# Dual licences

- Explicit choice of two open source licenses
- Typically the choice is passed on by the distributor
- Not to be confused with:
  - Dual licensing business model
  - Conjunction of two licenses (see e.g. OpenSSL)
- Related:
  - Licensing under GPL/LGPL version n "or later"
  - GPL exceptions/"additional permissions" - e.g. Classpath Exception

# Licence compatibility

- Confusing doctrine, mostly about GPL interpretation
- Question is whether a work combining GPL code and code under another open source license violates the GPL copyleft condition by imposing "further restrictions"



# Tips

- Don't use a nonstandard open source license
- Don't write your own license
- Make sure you comply with conditions of any upstream licenses
- Don't use a license you aren't prepared to "self-comply" with
- When considering what license to use for your project, pay special attention to preferences of your target user and contributor community
- Don't release code without any indication of licensing
- Keep intact all upstream legal notices
- If using a GPL-family license, allow use of later versions