

A Lawyer Looks at the Open Source Revolution

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Overview

- n What is "open source" software?
- n Who makes it?
- n How is it developed?
- n Is it new?
- n Who uses it?
- n How does licensing fit into the picture?
- n Reflections on SCO litigation

What is "open source" software?

- n source = software in source code form
- n open = freedom to:
 - n View the source code
 - n Run the software for any purpose
 - n Modify the software in any way
 - n Distribute the software and any modifications
- n Software development model
- n Philosophy— share and collaborate
- n Licensing Model

Contrast to "Proprietary" or "Commercial" Software

- n Hold source code as trade secret
- n Code distributed in object code form
- n Limited derivative works rights licensed

Other Labels for "Open Source"

- n Free software
- n Copyleft
- n Community software
- n Public software

What is "Shared Source?"

- n Microsoft's response to success of Open Source
- n Recognition that some constituencies do need increased access to source code
 - n Large end users
 - n ISVs and IHVs
 - n Governments
 - n Universities

Who Makes Open Source Software?

- n Hackers (not crackers)
- n Hackernotables
 - n Richard Stallman (Free Software Foundation)
 - n Eric Raymond (The Cathedral and the Bazaar, Homesteading the Noosphere)
 - n Linus Torvalds (Linux)
 - n Bruce Perens (Open Source Definition)

How is it Developed?

- n Scratching an itch
- n Collaborative development
- n Peer review
- n Centralized decision-making
- n "Given enough eyeballs, all bugs are shallow"
Eric Raymond
- n Forking

Is Open Source a New Idea?

- n Software shared traditionally by hobbyists and scientists
- n Internet makes sharing and collaboration more efficient
- n Watershed event: Netscape licenses Communicator under open source license
- n Linux+Apache becomes popular as web server
- n Eric Raymond the software evangelist

Who Uses Open Source Software?

- n At first: hackers
- n Now: lots of people
 - n Internet backbone: Apache, Sendmail, BIND
 - n Linux
 - n IBM, Intel, Apple, HP, Sun
 - n Commercial businesses
 - n Federal and state governments
 - n E.g., China, Mexico, Indonesia, Japan, Germany

Who does not use it much (yet)?

- n Average desktop PC user
- n Businesses worried about who stands behind code and TCO
- n Developers and users worried about IP contamination

Open source software as a business

- n "Think free speech, not free beer"
Richard Stallman
- n Branded distributions
- n Sell hardware, give away software
- n Sell services and support
- n Dual versions
- n Dual licensing
- n Value added software
- n Sell sponsorships
- n Sell ads and T-shirts

Licensing: the Force behind open source

- n "Free" and "open" is not:
 - n Public domain
 - n Copyright "first sale"
 - n Shareware or freeware
- n Licensing makes it work
 - n Control over use
 - n Risk shifting
 - n "To stay free, software must be copyrighted and licensed." Debian GNU/Linux Group

Open source licensing models

- n GNU General Public License
- n BSD-style license
- n Other models:
 - n Mozilla
 - n IBM, Apple, Intel, Real Networks, etc.
 - n Artistic license
 - n GNU Lesser GPL
- n Open Source Initiative (opensource.org)

BSD-style license

- n Key terms:
 - n License grant: unlimited use, modification, distribution
 - n No warranties; disclaimer of consequential damages
 - n No endorsement
 - n Attribution

GNU General Public License

- n Key terms:
 - n Unlimited right to run program
 - n Unlimited access to source code
 - n Unlimited right to distribute verbatim copies
 - n May create derivatives IF you agree to make the derivatives "free"
 - n What is a "derivative"
 - n When does "free" mean "no charge"?
 - n License is "viral"
 - n No warranties; disclaimer of consequential damages

SCO litigation

- n SCO sues IBM for including UNIX code in its Linux distribution; Red Hat sues SCO for declaratory judgment
- n Sun, Microsoft, and others pay license fee to SCO
- n SCO approaches Linux end users about paying royalty (some pay, some get sued)

SCO litigation: broader issues

- n Who should bear risk of intellectual property infringement for Open Source software?
- n Do Open Source development practices adequately screen for infringing code?
- n Is the GNU General Public License enforceable?

SCO litigation: some reflections

- n It was just a matter of time
- n If there is an infringement problem, it may be fleeting
- n How will the Open Source Community respond?
 - n Treat SCO lawsuit as aberration
 - n Improve development practices
 - n Business opportunity?

Other resources

- n Robert W. Gomulkiwicz, Debugging Open Source Software Licensing, 64 U. Pitt. L. Rev. 75 (2002)
- n Robert W. Gomulkiwicz, How Copyleft Uses License Rights to Succeed in the Open Source Software Revolution and the Implications for Article 2B, 36 Hous. L. Rev. 179 (1999)

Questions?