

Open Source Licensing, Contract and Copyright Law

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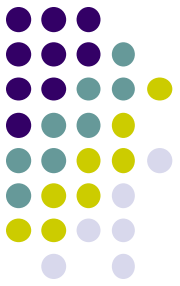




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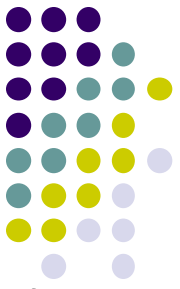
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Open Source licensing, contract and copyright law



- Open source licensing and development approaches have been challenging and transforming software development for decades.
- It is built on solid, traditional legal foundations, including the rights granted by copyright under law of US and the ways in which basic contract principles can alter and supersede those rights.

Basic Principle of Copyright Law



- In the US, the period protect by copyright is very long indeed:
 - The life of creator plus 70 years, 95 years from the date of publication or 120 years from the date of creation
- Copyright law does not protect any particular idea
- Copyright protects only the expression of that idea
 - The limitation to the expressions of an idea is the principle distinction between the application of patent and copyright
 - Unlike copyright, a valid patent does not protect the expression of an idea but the underlying substance of it

Basic Principle of Copyright Law



- The protections of copyright are subject to one more important limitation: time.
 - Copyright works are protected for a set period of time, measured either from the death of their creator or from their creation.
 - After the expiration of that period of time, the copyright protection on the work lapses as the work goes into the “public domain”
 - In the US, all of the rights belonging to the creator of the work become their at the time of the completion of the work in a fixed medium
 - ✓ Creator rarely take advantage of these rights by themselves, however.

Basic Principle of Copyright Law



- The relationship between the creator of a work and its publisher is often an uneasy one.
- The most typical trade made between creators and publishers is the licensing of the work in exchange for payments, known as royalties.
- The copyright of such works belongs to the employer, which, in the case of software, is usually also the publisher and the distributor of the software itself
- In general, under the American copyright system an effective monopoly is vested in the creator of each work, subject to relatively few limitations

Basic Principle of Copyright Law



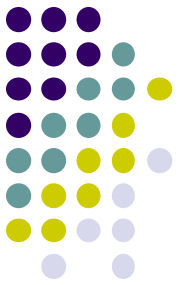
- Because of the negotiation of contracts by publishers with the creator or through the doctrine of work for hire, the benefits of copyright flow to the corporations that distribute the work, not the people who create it
- The fundamental purpose of open source licensing is to deny anybody the right to *exclusively* exploit a work
- By contrast, software is both functional and dynamic. Each program contains code that is both functional, in the sense that it does work,* and dynamic, in the sense that it can perform those functions in an entirely different context

Basic Principle of Copyright Law



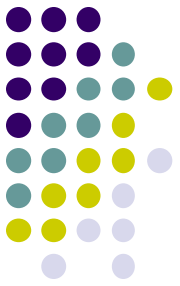
- A comparable consumer of open source licensed software is in an entirely different position
 - ✍ She can freely distribute copies of the work because of the “open distribution” principle
 - ✍ She can freely modify the work and distribute those derivative works, because of the “open modification” principle
- The people who receive copies of these works must themselves be able to redistribute the original and to make derivative works from the original, subject only to the limitation that they allow others to do the same. This principle is called “generational limitation.”
 - This limitation may, depending on the terms of the original license, prevent open source code from “going closed” and require that users and contributors to the code abide by the communitarian values of open source

Basic Principle of Copyright Law



- While open source differs from the operation of traditional copyright licensing by permitting both open distribution and open modification, the removal of the second type of limitation is probably the more important one
- Open source licensing makes possible three substantial improvements over traditional proprietary commercial software licensing models
 - ❑ The first, and perhaps the greatest, of these benefits is innovation
 - ❑ The second benefit is reliability
 - ❑ The third benefit is longevity

Issues With Copyrights And Patents



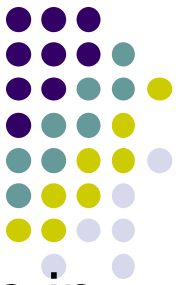
- All of the licenses can be broken up into two parts.
 - The first part asserts that the person granting the license, the licensor, has the right to license the work to which the license applies
 - The second part of every license is a grant (again, however limited) by the licensor to the licensee of rights to that licensed work
- Obviously, both parts of the license need to be there in order for the license to be effective.

Issues With Copyrights And Patents

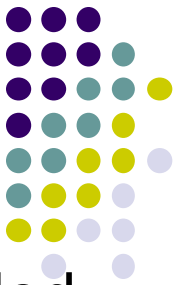


- Patents, however, present more complicated issues. It is more difficult to obtain and retain a patent in the first place, and there is always a risk of possible, and possibly unknowing, infringement of a patented process by the licensor, and, accordingly, by his or her licensees.
- Unlike copyright protection, which does not even require filing or a formal notice on the copyrighted work, obtaining a patent from the **Office of Patent and Trademark** requires filing of relatively complex and laborious paperwork, including, most importantly, some explanation of the novelty of the patent in question and how it differs from processes or mechanisms already known.

Issues With Copyrights And Patents



- Even if a patent holder has licensed that patent for use in open source software, they may not have the inclination or the resources to defend that patent.
- A larger problem is that there may be patent claims that apply to the licensed software but are known to neither the licensor nor the licensee.
 - ❑ There are no easy solutions to this problem.
 - ❑ Software patents are frequently granted and often maddeningly vague.



The Open Source Definition

- The Open Source Definition is the definition propounded by the Open Source Initiative, used to describe which licenses qualify as “Open Source” licenses.
- The Open Source Initiative also certifies licenses as OSI Certified to indicate that they fall within the Open Source Definition.
- Basic principles of open source licensing:
 - Open source licenses must permit non-exclusive commercial exploitation of the licensed work
 - Open source must make available the work’s source code
 - Open source must permit the creation of derivative works from the work itself



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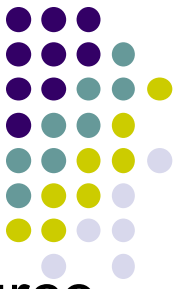
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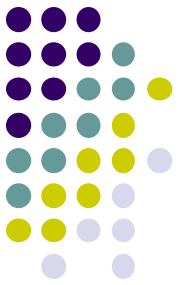
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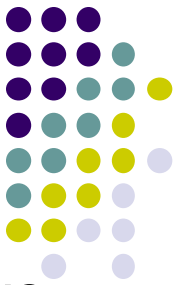


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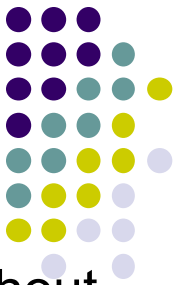


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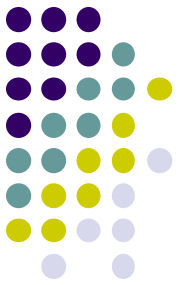
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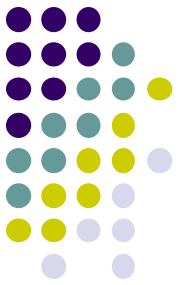
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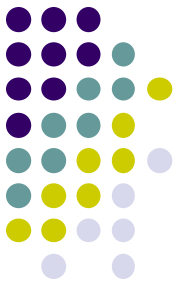


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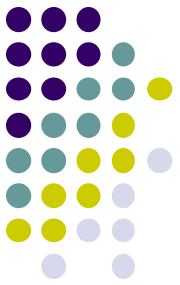


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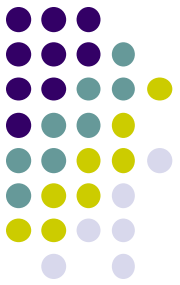


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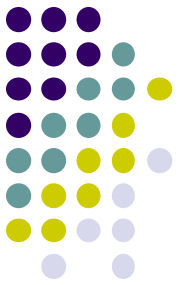


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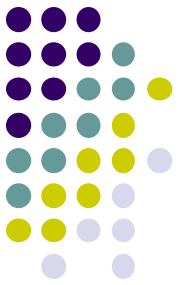


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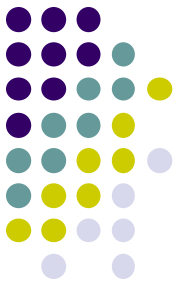


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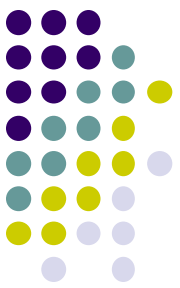


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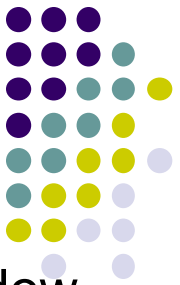
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Application and Philosophy

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Application and Philosophy

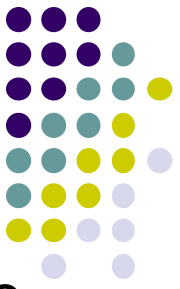
- ❑ For example, both Berkeley Unix (Sun Solaris...) and the X Window System (MAC OS X...) were research projects; the goal of their creators was to explore technology, to provide a proof-of-concept implementation, and then to permit others to build on that work. Commercial applications readily followed successful implementations of research ideas.
- ❑ Nonetheless, the very success of the commercial developments premised on programs distributed under these licenses could be said to undermine the purpose of open source licensing.
- ❑ The argument could be made, for example, that the widespread adoption of commercial versions of such programs discourages open source development and encourages the creation of code closed off to the open source community by proprietary licenses.



Application and Philosophy

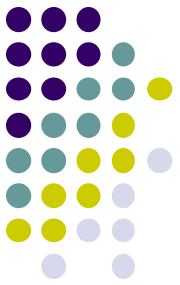
- ❑ Moreover, at least for certain types of programs, the nature of the function performed by the software makes additional license restrictions unnecessary to maintain an open development model.
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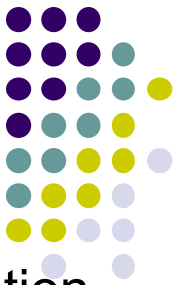


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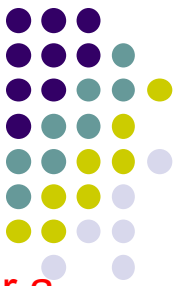
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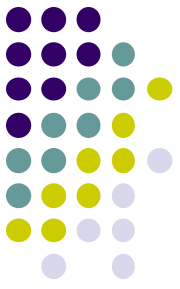
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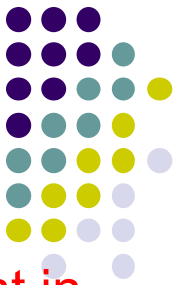
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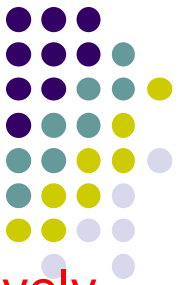
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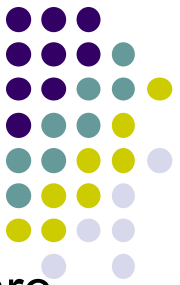
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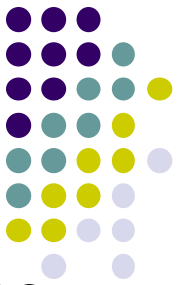
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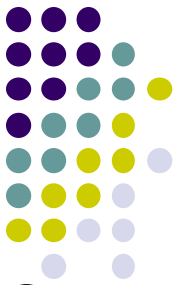
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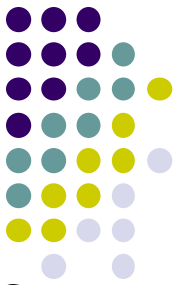
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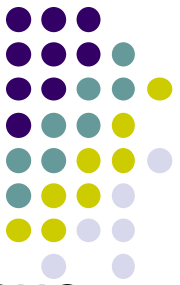
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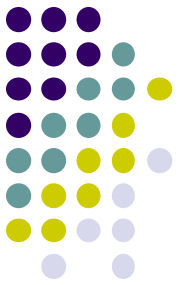
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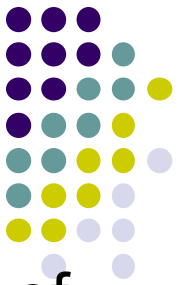
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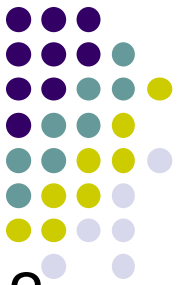


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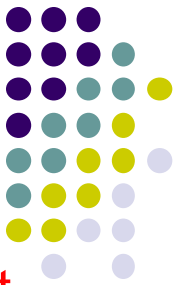
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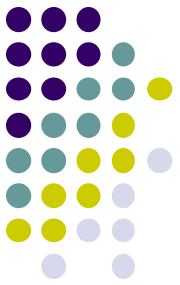
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- ❑ Accordingly, if the other program were licensed under a proprietary license and the library under the GPL and the program and library were distributed together under the proprietary license, the GPL would be violated, as the program plus library would be considered a derivative work that would be subject to limitations on copying, distribution, and modification that are inconsistent with the GPL.

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- ❑ The LGPL provides an alternative license that preserves many of the benefits of the GPL model for such libraries—in fact, the Lesser General Public License was in its first incarnation known as the Library General Public License.
- ❑ LGPL-licensed libraries can be linked with non-GPLlicensed programs, including proprietary software.

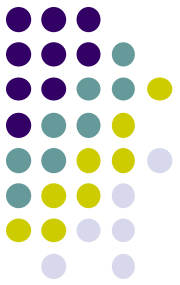
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Preamble

The licenses for most software are designed to take away your freedom to share and change it. By contrast, the GNU General Public Licenses are intended to guarantee your freedom to share and change free software—to make sure the software is free for all its users.

This license, the Lesser General Public License, applies to some specially designated software packages—typically libraries—of the Free Software Foundation and other authors who decide to use it. You can use it too, but we suggest you first think carefully about whether this license or the ordinary General Public License is the better strategy to use in any particular case, based on the explanations below.

When we speak of free software, we are referring to freedom of use, not price. Our General Public Licenses are designed to make sure that you have the freedom to distribute copies of free software (and charge for this service if you wish); that you receive source code or can get it if you want it; that you can change the software and use pieces of it in new free programs; and that you are informed that you can do these things.



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To protect your rights, we need to make restrictions that forbid distributors to deny you these rights or to ask you to surrender these rights. These restrictions translate to certain responsibilities for you if you distribute copies of the library or if you modify it.

We protect your rights with a two-step method: (1) we copyright the library, and (2) we offer you this license, which gives you legal permission to copy, distribute and/or modify the library.

To protect each distributor, we want to make it very clear that there is no warranty for the free library.

Finally, software patents pose a constant threat to the existence of any free program. Therefore, we insist that any patent license obtained for a version of the library must be consistent with the full freedom of use specified in this license.

Most GNU software, including some libraries, is covered by the ordinary GNU General Public License. This license, the GNU Lesser General Public License, applies to certain designated libraries, and is quite different from the ordinary General Public License.

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When a program is linked with a library, whether statically or using a shared library, the combination of the two is legally speaking a combined work, a derivative of the original library.

We call this license the “Lesser” General Public License because it does Less to protect the user’s freedom than the ordinary General Public License. It also provides other free software developers Less of an advantage over competing non-free programs. These disadvantages are the reason we use the ordinary General Public License for many libraries. However, the Lesser license provides advantages in certain special circumstances.

Although the Lesser General Public License is Less protective of the users’ freedom, it does ensure that the user of a program that is linked with the Library has the freedom and the wherewithal to run that program using a modified version of the Library.

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- ❑ Much of this preamble parallels the language in the GPL described earlier. There are two new points, however, worth identifying.
 - ❖ The first is the decision on the part of the developer as to which license to use for a particular library.
 - ❖ The second point worthy of mention is the distinction in the LGPL between “work based on the library,” which is subject to essentially the same restrictions as imposed by the GPL, and “work that is used with the library,” which is not.

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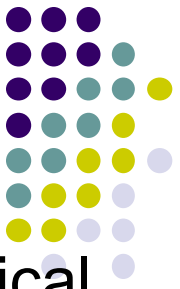
- ❑ As was the case with the GPL, the first section after the “Terms and Conditions for Copying, Distribution, and Modification” is Section 0, which defines the basic terms used in the license and sets out its fundamental premises.
 - ❖ 0. This License Agreement applies to any software library or other program which contains a notice placed by the copyright holder or other authorized party saying it may be distributed under the terms of this Lesser General Public License (also called “this License”). Each licensee is addressed as “you”.
 - ❖ A “library” means a collection of software functions and/or data prepared so as to be conveniently linked with application programs (which use some of those functions and data) to form executables.

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- In contrast to the GPL, the LGPL also includes a definition of “source code” in this section; the parallel definition is in this Section of the GPL.
 - ❖ “Source code” for a work means the preferred form of the work for making modifications to it. For a library, complete source code means all the source code for all modules it contains, plus any associated interface definition files, plus the scripts used to control compilation and installation of the library.

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- The final paragraph of Section 0 is substantially identical to the paragraph found at the end of the GPL's Section 0.
- ❖ Activities other than copying, distribution and modification are not covered by this License; they are outside its scope. The act of running a program using the Library is not restricted, and output from such a program is covered only if its contents constitute a work based on the Library (independent of the use of the Library in a tool for writing it). Whether that is true depends on what the Library does and what the program that uses the Library does.

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- ❑ Section 1 of the LGPL is substantially identical to Section 1 of the GPL, except that it refers to the “Library” instead of to the Program.
 - ❖ 1. You may copy and distribute verbatim copies of the Library’s complete source code as you receive it, in any medium, provided that you conspicuously and appropriately publish on each copy an appropriate copyright notice and disclaimer of warranty; keep intact all the notices that refer to this License and to the absence of any warranty; and distribute a copy of this License along with the Library.
 - ❖ You may charge a fee for the physical act of transferring a copy, and you may at your option offer warranty protection in exchange for a fee.

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- ❑ Section 2 of the LGPL appears to be substantially identical to the equivalent section of the GPL.
 - ❖ 2. You may modify your copy or copies of the Library or any portion of it, thus forming a work based on the Library, and copy and distribute such modifications or work under the terms of Section 1 above, provided that you also meet all of these conditions:
- ❑ The first of the clauses of this section, however, imposes a limitation absent from the GPL, i.e., it limits the type of derived work that can come from an LGPL-licensed program.
 - ❖ a) The modified work must itself be a software library.
- ❑ Section 2(a) should have read something like “The modified work must itself be a software library if the Library [i.e., the original work] is itself a library.”

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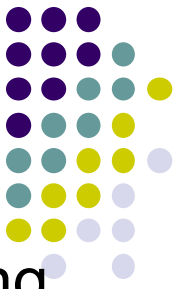
- ❑ Sections 2(b) and 2(c) mirror equivalent provisions in the GPL.
 - ❖ b) You must cause the files modified to carry prominent notices stating that you changed the files and the date of any change.
 - ❖ c) You must cause the whole of the work to be licensed at no charge to all third parties under the terms of this License.
- ❑ Section 2(d) adds specific limitations on licensed libraries' use of tables or other functionality provided by the program with which the library is intended to function.
 - ❖ d) If a facility in the modified Library refers to a function or a table of data to be supplied by an application program that uses the facility, other than as an argument passed when the facility is invoked, then you must make a good faith effort to ensure that, in the event an application does not supply such function or table, the facility still operates, and performs whatever part of its purpose remains meaningful.

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- The last three paragraphs of Section 2 are substantially identical to the parallel provisions in the GPL.
 - ❖ These requirements apply to the modified work as a whole. If identifiable sections of that work are not derived from the Library, and can be reasonably considered independent and separate works in themselves, then this License, and its terms, do not apply to those sections when you distribute them as separate works. But when you distribute the same sections as part of a whole which is a work based on the Library, the distribution of the whole must be on the terms of this License, whose permissions for other licensees extend to the entire whole, and thus to each and every part regardless of who wrote it.

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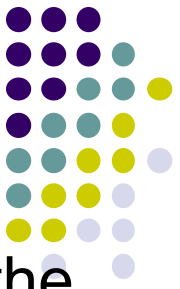
- Section 3 of the LGPL addresses a change in licensing from the LGPL to the GPL.
 - ❖ 3. You may opt to apply the terms of the ordinary GNU General Public License instead of this License to a given copy of the Library. To do this, you must alter all the notices that refer to this License, so that they refer to the ordinary GNU General Public License, version 2, instead of to this License. (If a newer version than version 2 of the ordinary GNU General Public License has appeared, then you can specify that version instead if you wish.) Do not make any other change in these notices.

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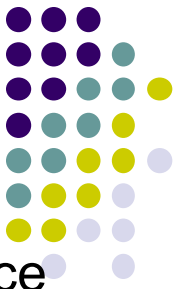
- ❑ This change in the license applicable to a given copy of a library is a one-way street. Once a program is re-licensed as a GPL program, it cannot go back to licensing under the LGPL.
 - ❖ Once this change is made in a given copy, it is irreversible for that copy, so the ordinary GNU General Public License applies to all subsequent copies and derivative works made from that copy.
- ❑ Of course, as other copies of the library would still be available licensed under the LGPL, this sentence really addresses derivative works.
 - ❖ This option is useful when you wish to copy part of the code of the Library into a program that is not a library.

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- Section 4 substantially parallels similar provisions of the GPL with regard to providing the source code with the binary code.
 - ❖ 4. You may copy and distribute the Library (or a portion or derivative of it, under Section 2) in object code or executable form under the terms of Sections 1 and 2 above provided that you accompany it with the complete corresponding machine-readable source code, which must be distributed under the terms of Sections 1 and 2 above on a medium customarily used for software interchange.
 - ❖ If distribution of object code is made by offering access to copy from a designated place, then offering equivalent access to copy the source code from the same place satisfies the requirement to distribute the source code, even though third parties are not compelled to copy the source along with the object code.

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- ❑ The LGPL, like the GPL, does permit the distribution of the source code by offering it on equivalent terms as the executable, such as on an FTP site, if the binary code is so offered.
- ❑ Section 5 provides the critical definition of the “work that uses the Library.” The LGPL was designed to permit open source code to function with code licensed under other models. This section serves that purpose by excluding from the terms of the license “work that uses the Library.”
 - ❑ 5. A program that contains no derivative of any portion of the Library, but is designed to work with the Library by being compiled or linked with it, is called a “work that uses the Library”. Such a work, in isolation, is not a derivative work of the Library, and therefore falls outside the scope of this License.

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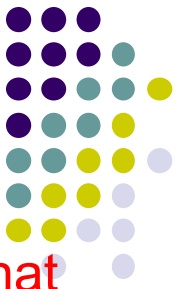
- “[I]n isolation” is the critical phrase of this paragraph, as the rest of the section makes clear.
 - ❖ However, linking a “work that uses the Library” with the Library creates an executable that is a derivative of the Library (because it contains portions of the Library), rather than a “work that uses the library”.* The executable is therefore covered by this License. Section 6 states terms for distribution of such executables.
- So far, we have seen that the LGPL makes distinctions between essentially three different types of work:
 1. The LGPL-licensed Library.
 2. The “work that uses the Library.”
 3. The combined “work that uses the Library” and Library together, which I will refer to here as the “combined work,” a term not used in the LGPL.

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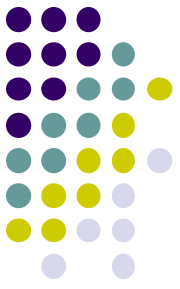
- ❑ Section 2 of the LGPL also states that when a “combined work” is distributed, it is also subject to distribution under the terms of the LGPL. These terms are spelled out in Section 6.
 - ❖ 6. As an exception to the Sections above, you may also combine or link a “work that uses the Library” with the Library to produce a work containing portions of the Library, and distribute that work under terms of your choice, provided that the terms permit modification of the work for the customer’s own use and reverse engineering for debugging such modifications.
- ❑ This provision is on its face somewhat unclear. As is made clear by the following paragraphs, Section 6 requires no such thing.

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- ❖ You must give prominent notice with each copy of the work that the Library is used in it and that the Library and its use are covered by this License. You must supply a copy of this License. If the work during execution displays copyright notices, you must include the copyright notice for the Library among them, as well as a reference directing the user to the copy of this License. Also, you must do one of these things:
 - After this paragraph follows provisions similar in purpose to those in Section 3 of the GPL. They are designed to give notice of the application of copyright to the Library and the fact that the Library is licensed under the LGPL. They also give licensees access to the source code of the Library and allow them to make modifications to it.

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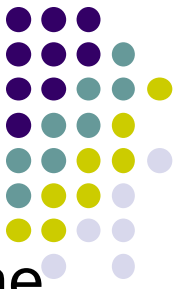
- ❖ a) Accompany the work with the complete corresponding machine-readable source code for the Library including whatever changes were used in the work (which must be distributed under Sections 1 and 2 above); and, if the work is an executable linked with the Library, with the complete machine-readable “work that uses the Library”, as object code and/or source code, so that the user can modify the Library and then relink to produce a modified executable containing the modified Library. (It is understood that the user who changes the contents of definitions files in the Library will not necessarily be able to recompile the application to use the modified definitions.)
- ❖ b) Use a suitable shared library mechanism for linking with the Library. A suitable mechanism is one that (1) uses at run time a copy of the library already present on the user’s computer system, rather than copying library functions into the executable, and (2) will operate properly with a modified version of the library, if the user installs one, as long as the modified version is interface-compatible with the version that the work was made with.

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- ❑ This provision describes another option for distributing the combined work that may be more user-friendly.
- ❑ The following provisions are substantially identical to those in Section 3 of the GPL:
 - ❖ c) Accompany the work with a written offer, valid for at least three years, to give the same user the materials specified in Subsection 6a, above, for a charge no more than the cost of performing this distribution.
 - ❖ d) If distribution of the work is made by offering access to copy from a designated place, offer equivalent access to copy the above specified materials from the same place.
 - ❖ e) Verify that the user has already received a copy of these materials or that you have already sent this user a copy.

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- ❑ Section 6(e) of the LGPL offers an option unique to the LGPL, which may be useful when the distributor is distributing a modified version of the “work that uses the Library” to users who have already received the Library used as part of the combined work.
- ❑ The form of the executable of the “work that uses the Library” is defined in the following paragraph of Section 6.
 - ❖ For an executable, the required form of the “work that uses the Library” must include any data and utility programs needed for reproducing the executable from it. However, as a special exception, the materials to be distributed need not include anything that is normally distributed (in either source or binary form) with the major components (compiler, kernel, and so on) of the operating system on which the executable runs, unless that component itself accompanies the executable.

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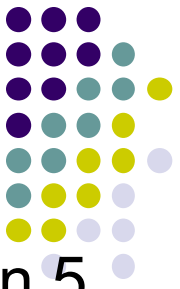
- Section 7 addresses the situation in which a distributor has created a work based on the Library and has placed it side by side with another library under a proprietary license (or license other than the LGPL that permits the distributor to distribute it) to make it into what is in effect a single library.
- ❖ 7. You may place library facilities that are a work based on the Library side-by-side in a single library together with other library facilities not covered by this License, and distribute such a combined library, provided that the separate distribution of the work based on the Library and of the other library facilities is otherwise permitted, and provided that you do these two things:

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- ❖ a) Accompany the combined library with a copy of the same work based on the Library, uncombined with any other library facilities. This must be distributed under the terms of the Sections above.
 - ❖ b) Give prominent notice with the combined library of the fact that part of it is a work based on the Library, and explaining where to find the accompanying uncombined form of the same work.
- ❑ Section 8 of the LGPL operates much like Section 4 of the GPL.
- ❖ 8. You may not copy, modify, sublicense, link with, or distribute the Library except as expressly provided under this License. Any attempt otherwise to copy, modify, sublicense, link with, or distribute the Library is void, and will automatically terminate your rights under this License. However, parties who have received copies, or rights, from you under this License will not have their licenses terminated so long as such parties remain in full compliance.

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□ Section 9 of the LGPL likewise corresponds to Section 5 of the GPL.

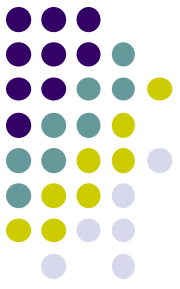
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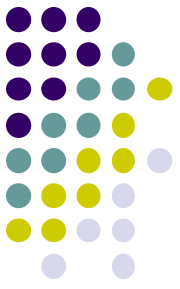
- ❑ The remaining sections of the LGPL, 10 through 16, are substantially identical to Sections 6 through 12 of the GPL. They are included here for completeness.
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 - ❖ 11. If, as a consequence of a court judgment or allegation of patent infringement or for any other reason (not limited to patent issues), conditions are imposed on you (whether by court order, agreement or otherwise) that contradict the conditions of this License, they do not excuse you from the conditions of this License. If you cannot distribute so as to satisfy simultaneously your obligations under this License and any other pertinent obligations, then as a consequence you may not distribute the Library at all. For example, if a patent license would not permit royalty-free redistribution of the Library by all those who receive copies directly or indirectly through you, then the only way you could satisfy both it and this License would be to refrain entirely from distribution of the Library.

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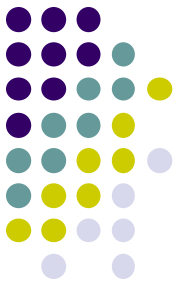
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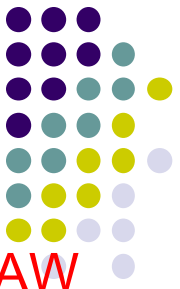
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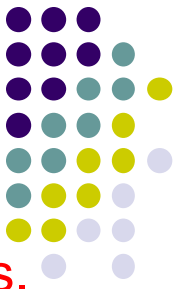
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- ❑ To apply these terms, attach the following notices to the library. It is safest to attach them to the start of each source file to most effectively convey the exclusion of warranty; and each file should have at least the “copyright” line and a pointer to where the full notice is found.

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- ❖ This library is free software; you can redistribute it and/or modify it under the terms of the GNU Lesser General Public License as published by the Free Software Foundation; either version 2.1 of the License, or (at your option) any later version.
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 - ❖ Yoyodyne, Inc., hereby disclaims all copyright interest in the library ‘Frob’ (a library for tweaking knobs) written by James Random Hacker.
 - ❖ signature of Ty Coon, 1 April 1990
 - ❖ Ty Coon, President of Vice

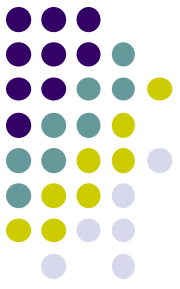
The Mozilla Public License 1.1 (MPL 1.1)



- ❑ In January, 1998, Netscape Communications decided to release the binary code of its Communicator web-browser for free. Less than 24 hours later, it decided to release the Communicator source code as well.
- ❑ As a result, at the same time that Netscape was addressing the many technical problems with transitioning Communicator into open source

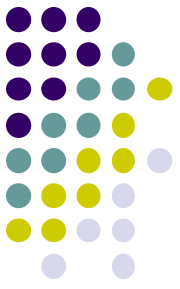
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- The Netscape Public License (NPL) and the Mozilla Public License (MPL) were the result of these efforts. The NPL was substantially similar to the MPL, but it reserved certain rights to Netscape, most importantly, the right on the part of Netscape to relicense code developed by third parties that is derived from Communicator code under a proprietary or other license. Third-party modifiers of NPL-licensed code could thus lose any benefits that might flow from their contributions, without the guarantee, as for instance under the GPL, that their code will remain available to the community of programmers. The MPL does not contain the particular provisions embodying this grant of rights to Netscape.
- ❖ The name “Mozilla” is derived from the name for the Navigator code used at Netscape — a combination of “Mosaic,” an early web browser, and Godzilla.

The Mozilla Public License 1.1 (MPL 1.1)



- ❑ The MPL reads much more like a standard corporate contract, beginning with a long list of definitions, before going into another long list of numbered paragraphs and sub-paragraphs.
- ❑ Section 1 of the MPL consists entirely of definitions.
 - ❖ 1. Definitions.
 - ❖ 1.0.1. “Commercial Use” means distribution or otherwise making the Covered Code available to a third party.
- ❑ Commercial Use is defined in a somewhat counter-intuitive way. As defined, it includes any form of distribution, whether in exchange for payment or not.
 - ❖ 1.1. “Contributor” means each entity that creates or contributes to the creation of Modifications.

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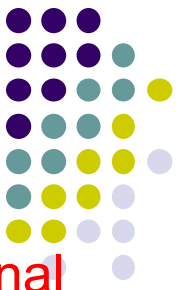
(MPL 1.1)



- ❑ The explicit definition of the term “Contributor,” and the use of that term throughout the MPL1.1, distinguishes this license from the others we have previously examined.
- ❑ This idea of “Contributors” to the code reflects the centralized notion behind the MPL and the Mozilla project that it was intended to license. Although it was certainly not mandated by the license itself, the MPL reflects a development model under which “Contributors” would be supplying their work to a continuing project, not one under which licensees would be free to appropriate the code to their own uses, subject to certain restrictions on their distribution of the code.

The Mozilla Public License 1.1

(MPL 1.1)



- ❖ 1.2. “Contributor Version” means the combination of the Original Code, prior Modifications used by a Contributor, and the Modifications made by that particular Contributor.
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 - ❖ 1.3. “Covered Code” means the Original Code or Modifications or the combination of the Original Code and Modifications, in each case including portions thereof.
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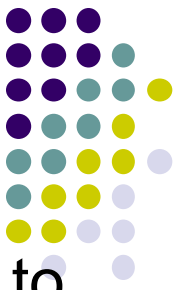
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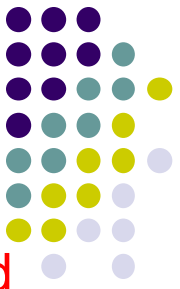
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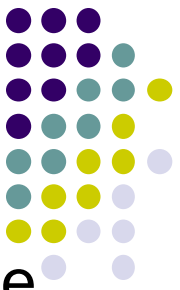
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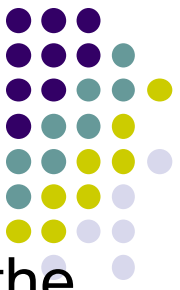
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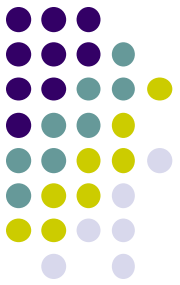
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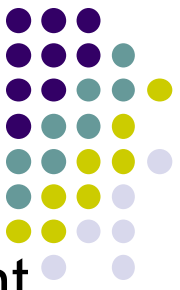
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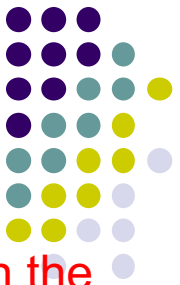
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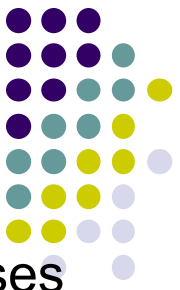
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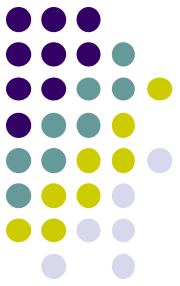
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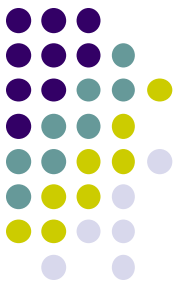
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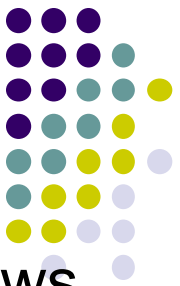
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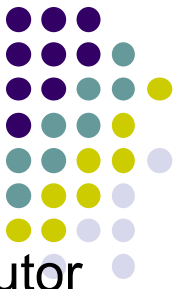
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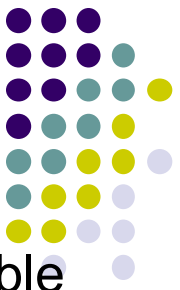
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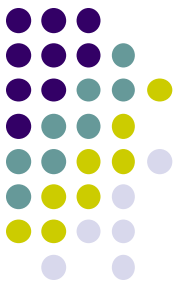
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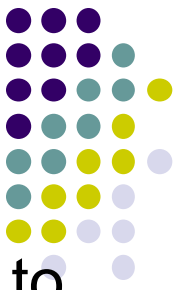
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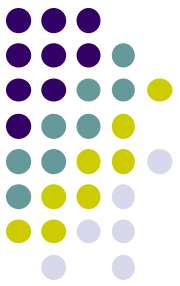
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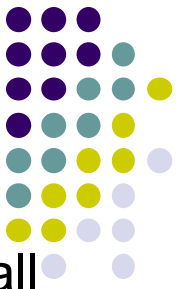
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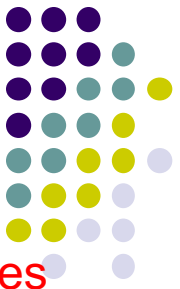
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- ❑ This is more permissive than Section 4 of the GPL, which voids all rights under the license upon its infringement.
- ❑ The MPL provides that the license terminates as a consequence of patent litigation brought by a putative licensee with, however, some important limitations.
 - ❖ 8.2. If You initiate litigation by asserting a patent infringement claim (excluding declaratory judgment actions) against Initial Developer or a Contributor (the Initial Developer or Contributor against whom You file such action is referred to as “Participant”) alleging that:

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- ❖ (a) such Participant's Contributor Version directly or indirectly infringes any patent, then any and all rights granted by such Participant to You under Sections 2.1 and/or 2.2 of this License shall, upon 60 days notice from Participant terminate prospectively, unless if within 60 days after receipt of notice You either: (i) agree in writing to pay Participant a mutually agreeable reasonable royalty for Your past and future use of Modifications made by such Participant, or (ii) withdraw Your litigation claim with respect to the Contributor Version against such Participant. If within 60 days of notice, a reasonable royalty and payment arrangement are not mutually agreed upon in writing by the parties or the litigation claim is not withdrawn, the rights granted by Participant to You under Sections 2.1 and/or 2.2 automatically terminate at the expiration of the 60 day notice period specified above.
- ❑ Curiously enough, the MPL provides for more punitive termination provisions if the patent infringement alleged against the Initial Developer or a Contributor does not relate to Covered Code but to some other action of such persons.

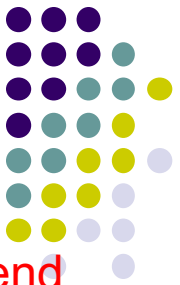
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- ❖ (b) any software, hardware, or device, other than such Participant's Contributor Version, directly or indirectly infringes any patent, then any rights granted to You by such Participant under Sections 2.1(b) and 2.2(b) are revoked effective as of the date You first made, used, sold, distributed, or had made, Modifications made by that Participant.
- ❑ Such termination has no “cooling off period” and is, moreover, retroactive. The revocation is “backdated” from the first use of the code under the license by the person suing.
 - ❖ 8.3. If You assert a patent infringement claim against Participant alleging that such Participant's Contributor Version directly or indirectly infringes any patent where such claim is resolved (such as by license or settlement) prior to the initiation of patent infringement litigation, then the reasonable value of the licenses granted by such Participant under Sections 2.1 or 2.2 shall be taken into account in determining the amount or value of any payment or license.
- ❑ This provision has no binding effect and can really be read as exhortatory only.

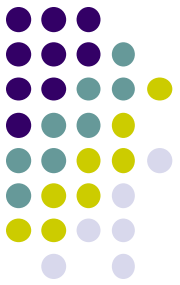
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- ❖ 8.4. In the event of termination under Sections 8.1 or 8.2 above, all end user license agreements (excluding distributors and resellers) which have been validly granted by You or any distributor hereunder prior to termination shall survive termination.
- ❑ This duplicates the effect of Section 8.1.
- ❑ The following section disclaims liability to the extent permitted by law, like many of the other open source licenses already examined.

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- ❖ 9. LIMITATION OF LIABILITY.
- ❖ UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, SHALL YOU, THE INITIAL DEVELOPER, ANY OTHER CONTRIBUTOR, OR ANY DISTRIBUTOR OF COVERED CODE, OR ANY SUPPLIER OF ANY OF SUCH PARTIES, BE LIABLE TO ANY PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF SUCH PARTY SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM SUCH PARTY'S NEGLIGENCE TO THE EXTENT APPLICABLE LAW PROHIBITS SUCH LIMITATION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS EXCLUSION AND LIMITATION MAY NOT APPLY TO YOU.

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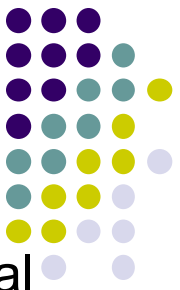
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- ❑ Except as provided by separate agreement to warranty or otherwise indemnify against loss, as permitted under Section 3.5, any software provided under the MPL is provided “as is,” with the user taking responsibility for its use, except to the extent such a disclaimer is prohibited by law.
- ❖ 10. U.S. GOVERNMENT END USERS.
- ❖ The Covered Code is a “commercial item,” as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire Covered Code with only those rights set forth herein.
- ❑ These provisions ensure that United States government agencies may be bound by commercial software licensing agreements.

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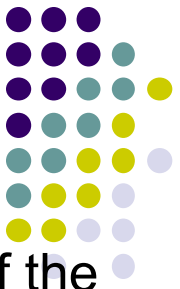
- Section 11 contains a bundle of provisions typical in a commercial contract.

- ❖ 11. MISCELLANEOUS.

- ❖ This License represents the complete agreement concerning subject matter hereof. If any provision of this License is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable. This License shall be governed by California law provisions (except to the extent applicable law, if any, provides otherwise), excluding its conflict-of-law provisions. With respect to disputes in which at least one party is a citizen of, or an entity chartered or registered to do business in the United States of America, any litigation relating to this License shall be subject to the jurisdiction of the Federal Courts of the Northern District of California, with venue lying in Santa Clara County, California, with the losing party responsible for costs, including without limitation, court costs and reasonable attorneys' fees and expenses. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Any law or regulation which provides that the language of a contract shall be construed against the drafter shall not apply to this License.

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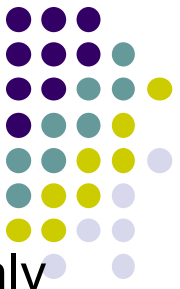
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- ❑ This section provides that California law governs interpretation of the contract and provides that the venue for all disputes—in which one of the participants (i.e., either the plaintiff or the defendant) is a citizen or an entity registered to do business in the United States—shall be the federal district court in Santa Clara, California (not coincidentally a venue that was convenient for Netscape when the contract was written, before their acquisition by AOL).
- ❑ The next section of the license addresses the situation in which a legal claim is made against the Initial Developer and one or more Contributors and attempts to impose a responsibility on both to jointly address such a claim.
 - ❖ 12. RESPONSIBILITY FOR CLAIMS.
 - ❖ As between Initial Developer and the Contributors, each party is responsible for claims and damages arising, directly or indirectly, out of its utilization of rights under this License and You agree to work with Initial Developer and Contributors to distribute such responsibility on an equitable basis. Nothing herein is intended or shall be deemed to constitute any admission of liability.

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- ❑ It is not clear what legal effect this section has, if any. It is certainly possible that both the Initial Developer and a Contributor could be held jointly and severally liable (meaning that each is fully responsible for the violation of the other), say, if the Covered Code was found to infringe on a patent or copyright held by a third party, and both the Initial Developer and the Contributor had distributed the Covered Code.
- ❑ Section 13 describes a legal arrangement for multiple licensing of the Covered Code.
 - ❖ 13. MULTIPLE-LICENSED CODE.
 - ❖ Initial Developer may designate portions of the Covered Code as Multiple-Licensed. Multiple-Licensed means that the Initial Developer permits you to utilize portions of the Covered Code under Your choice of the NPL or the alternative licenses, if any, specified by the Initial Developer in the file described in Exhibit A.

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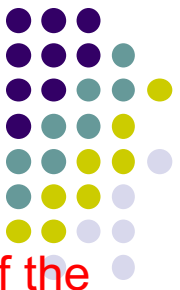
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- ❑ Section 13 is the last section of the license. A model “fill-in-the-blanks” Exhibit A follows, for those who choose to become Initial Developers of their programs under the MPL.
 - ❖ EXHIBIT A -Mozilla Public License.
 - ❖ “The contents of this file are subject to the Mozilla Public License Version 1.1 (the “License”); you may not use this file except in compliance with the License. You may obtain a copy of the License at
 - ❖ <http://www.mozilla.org/MPL/>
 - ❖ Software distributed under the License is distributed on an “AS IS” basis, WITHOUT WARRANTY OF ANY KIND, either express or implied. See the License for the specific language governing rights and limitations under the License.
 - ❖ The Original Code is _____.
 - ❖ The Initial Developer of the Original Code is _____.
 - ❖ Portions created by _____ are Copyright (C) _____
 - ❖ _____. All Rights Reserved.
- ❖ Contributor(s): _____.

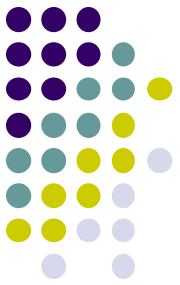
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- ❖ Alternatively, the contents of this file may be used under the terms of the _____ license (the [_____] License), in which case the provisions of [_____] License are applicable instead of those above. If you wish to allow use of your version of this file only under the terms of the [_____] License and not to allow others to use your version of this file under the MPL, indicate your decision by deleting the provisions above and replace them with the notice and other provisions required by the [_____] License. If you do not delete the provisions above, a recipient may use your version of this file under either the MPL or the [_____] License.”
- ❖ [NOTE: The text of this Exhibit A may differ slightly from the text of the notices in the Source Code files of the Original Code. You should use the text of this Exhibit A rather than the text found in the Original Code Source Code for Your Modifications.]
- ❑ The MPL provides a novel solution to the problems faced by Netscape in bringing into open source an already well-established set of code and setting up terms and conditions that would both protect its rights and encourage contributors to modify and improve that work.

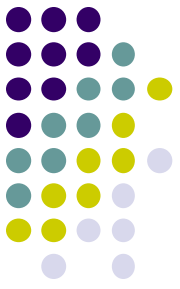
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- Its terms and focus reflect its origins: its distinction between the Initial Developer and subsequent Contributors sets it apart from, say, the more freeform development contemplated by the GPL.
- Its emphasis on patent rights and the limited grant of them provided by the license also reflects its corporate origin and the intent on the part of Netscape to limit, to the extent possible, the grant of rights while still remaining consistent with an open source model.
- By doing so, the MPL attempts to ensure that both open source volunteers and commercial developers are comfortable cooperating in this legal environment.

Application and Philosophy

- The GPL and MPL both have had symbolic as well as practical impacts in the world of software development. Those effects of these licenses, beyond their strict terms, are described next.

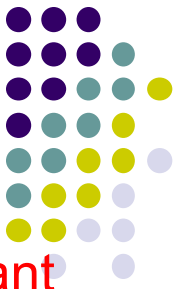


The GPL License and the Free Software Philosophy



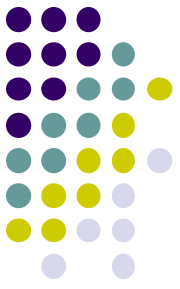
- ❑ The impact of the GPL, and its offshoot, the LGPL, on the development of software cannot be overstated.
- ❑ This success, depending on your point of view, arises either because of, or despite, the fact that the GPL bars any development of software from GPL-licensed software that is not itself GPL-licensed.
- ❑ The GPL seems to embody the maxim that “Freedom in a commons brings ruin to all.”
- ❑ By requiring that all contributions to GPL projects be themselves GPL-licensed, the GPL ensures not only that these contributions are available to other programmers but also encourages contributions from those programmers to whom it is important that their contributions be made, and remain, “free,” as that term is used in the GPL.
- ❑ Based on the success of the GNU/Linux project alone, the free software project has succeeded.

The GPL License and the Free Software Philosophy



- ❑ Part of this success is due to the fact that the GPL has as important a symbolic purpose as a practical one.
- ❑ The development of projects under the GPL depends on each participant adhering to the terms of the license by making his or her own contribution available to the community of developers.
- ❑ This adherence has resulted in the great success enjoyed by GPL-licensed projects.
- ❑ But the GPL has an equally important aspirational purpose.
 - ❖ Given that the GPL is often viewed as the “purest” form of licensing in nurturing and encouraging open development of software, development under this license has drawn programmers who take seriously the larger concept of open software development.
 - ❖ This has had results beyond those caused by the terms of the license itself.
- ❑ Contrary to the beliefs of some, the GPL does not require that software running on a GPL-licensed operating system be licensed under the GPL.

The GPL License and the Free Software Philosophy



- ❑ Similarly, the GPL does not require that only GPL-licensed programs be distributed as part of a distribution containing GPL-licensed code.
- ❑ Conversely, the development of free software projects is not determined, or even necessarily shaped, by the terms of the GPL.
- ❑ While the GPL encourages a certain type of development, it does not mandate any particular type of development structure. Indeed, it invites many different approaches to development.
- ❑ Moreover, even for projects licensed under non-GPL licenses, there are significant advantages to maintaining an “open development” model in which code is kept available to the open source community and not developed (as is permitted) under proprietary licenses.

The GPL License and the Free Software Philosophy



- ❑ While its terms may provide the foundation for free software development, the GPL is also a potent symbol of a much larger, and more important, idea of how software should be made and maintained.
- ❑ The success of this license has been driven as much by the ideals that it represents as by strict application of its legal terms.

The Mozilla Public License: Circumstances and Opportunities



- ❑ As already described, the MPL was the result of a decision by Netscape Communications—one of the first Internet companies—to open source license the code to its Netscape Communicator software in January, 1998.
- ❑ Netscape was in an intense competition with Microsoft, whose rival web browser, Internet Explorer, had the advantage of its close association with Microsoft’s dominant Windows operating system.
- ❑ The MPL was an attempt to get some of the benefit of open source development into a program developed under a proprietary license.
- ❑ The initial announcement of the “opening” of the Communicator code was greeted with great enthusiasm, although Netscape’s own economic condition—and its eventual absorption into America Online—caused problems for the project.
 - ❖ Open sourcing the project by itself didn’t reverse Netscape’s fortunes, but it has been a key source of continued innovation in the web browser market.

The Mozilla Public License: Circumstances and Opportunities



- ❑ The MPL itself has thrived as an open source license.
- ❑ The well-constructed, well-written MPL has certainly found a niche: only the BSD, GPL, and LGPL Licenses are associated with substantially more projects than the MPL.
- ❑ The MPL has also been used as the base for a number of other Open Source Initiative-certified licenses, including the Apple Public License, the Nokia Open Source License, and the Sun Public License.
 - ❖ The success of licenses is a factor less of the terms or the wording of those licenses than of the ideas that they represent.
 - ❖ Powerful, meaningful ideas draw minds, and the success of open source and free software licensing is the result of the minds that such ideas can draw.

Qt, Artistic, and Creative Common License

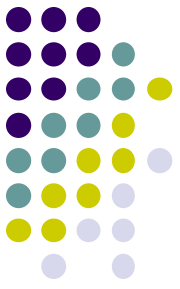


- ❑ This addresses two licenses closely associated with particular programs: the Q Public License (the Qt Toolkit) and the Artistic License (Perl).
- ❑ Each of these licenses has unique features, reflecting the specific terms that their creators wished to impose on users or modifiers of their work.
- ❑ Unlike the GPL or BSD licenses, these licenses are not frequently applied to programs other than those for which they were originally developed, and they tend to be adapted only for the code originally licensed under them and derivative works.
- ❑ Also discussed is the Creative Commons license—the fruit of an effort to expand the open source model of development beyond software to literature and the arts.



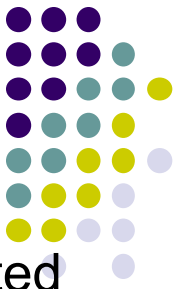
The Q Public License

- ❑ The Q Public License (QPL) was designed by the Norwegian firm Trolltech to govern the distribution of its software, the Qt Toolkit. The Qt Toolkit is a crossplatform toolkit for the development of graphical user interface (GUI) applications.
- ❑ The QPL provides a novel approach to a number of open source licensing issues.
- ❑ Among other things, the QPL permits distributions of modifications to covered software in the form of patches under less restrictive terms than modifications compiled with the original code, and provides certain rights applicable only to the initial developer of the licensed code.
- ❑ **[Self-refer to documents (chap 4)]**



The Q Public License

- ❑ The QPL has some interesting features. The distinction between requirements placed on modifications distributed in patches and the requirements placed on modifications distributed incorporated into executable code is meaningful and may prove useful at least in some contexts. However, with the cross-licensing of the Qt Toolkit under the GPL, and the GPL's adoption by the KDE developers, the QPL may become less important as a license.



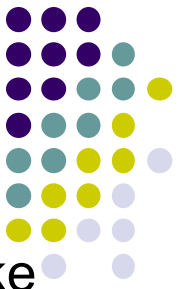
Artistic License (Perl)

- ❑ The Artistic (or Perl Artistic) License is named because of its stated intention to allow the initial developer to maintain “artistic” control over the licensed software and derivative works created from it.
- ❑ The Perl License is substantially identical to the Artistic License, but it includes an additional paragraph, which provides another option for commercial distribution.
 - ❖ Developed by Larry Wall in the late 1980s, Perl is a ubiquitous programming language, based on C (among other languages) and is found frequently in UNIX and UNIX-based systems.
 - ❖ It is omnipresent on the World Wide Web, with thousands, if not millions, of web sites running combinations of Perl scripts over Apache web servers.



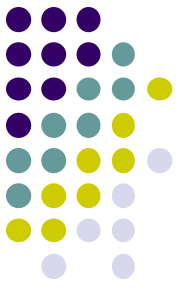
Artistic License (Perl)

- ❑ Because of Perl's ubiquity and because Perl is licensed under both the Artistic License and the GPL, programmers and users are as likely to come across the Perl License as any other open source or free software license except the GPL, BSD, or LGPL.
- ❑ Like the MPL and the QPL already discussed, the Artistic License was designed for use in connection with a particular program—Perl—and not as a generally applicable license, like the BSD or MIT Licenses, or the GPL, although it certainly could be used apart from Perl.
- ❑ **[Self-refer to documents (chap 4)]**



Artistic License (Perl)

- ❑ The Artistic License is designed for centralized projects, much like the QPL and the MPL. Because of this and the license's emphasis on the rights of the Copyright Holder, it is probably not suited for freeform software development projects.
- ❑ In addition, it has ambiguities in key terms governing modification and distribution of the licensed code. Nonetheless, it is worth taking the time to understand because of Perl's ubiquity. Moreover, as discussed, it is not difficult for contributors to Perl, despite the license's ambiguities, to comply with both the letter and the spirit of the license.



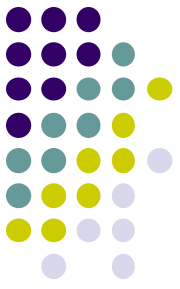
Creative Commons Licenses

- ❑ The Creative Commons series of licenses are the product of the Creative Commons Corporation, a not-for-profit organization founded in 2001 and currently based at Stanford University Law School.
- ❑ In December, 2002, inspired by the GPL, the Creative Commons Corporation issued a series of licenses designed to encourage creators of works to make their work available for public use. While not written for use in connection with software, the Creative Commons Licenses provide a solid basis for licensing the “open source” use of other expressions, including texts, music, web sites, and film.



Creative Commons Licenses

- ❑ In addition to the licenses, the Creative Commons Corporation provides two other services worth noting, at least briefly.
 - ❖ First, Creative Commons offers a “Public Domain Dedication,” a sort of ultra-permissive license that denotes the creator’s surrender of all rights under copyright.
 - ❖ Second, Creative Commons offers the “Founder’s Copyright,” a contractual undertaking between the creator and Creative Commons that mimics the effect of the original copyright laws: copyright is granted for 14 years and is renewable for one additional 14-year period.
- ❑ All the Creative Commons Licenses permit the free copying and distribution of the licensed work.
- ❑ The license also requires that distributions of both original and derivative works contain attributions crediting the original author of the work.



Creative Commons Licenses

- ❑ This license does not distinguish between commercial and non-commercial uses of a work: one of the more common limitations in Creative Commons Licenses is a bar on commercial use of works and derivative works.
- ❑ By contrast to the other licenses described in this book, this Creative Commons License governs the use of a written text, not a software program.

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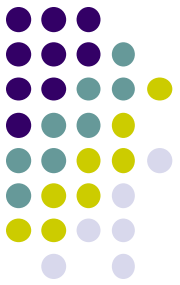
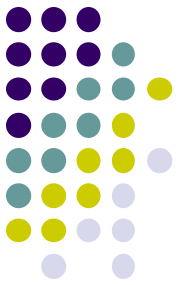
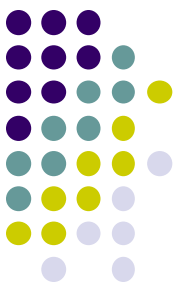


Figure 4-1. The Commons Deed for the Attribution-ShareAlike License, Version 1.0

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- ❑ **[More details: Self-refer to documents (chap 4)]**





Creative Commons Licenses



Figure 4-2. The Commons Deed for the Attribution-ShareAlike License, Version 2.0



Creative Commons Licenses

- ❑ The Creative Commons project is just getting started. It remains an open question whether the ideas behind the open source and free software licensing movement will have the same impact on aesthetic works that they had on software.
- ❑ Nonetheless, the Creative Commons Licenses provide a good foundation for the attempt.