



Academic Paper Writing

Intellectual Property

Dr. Song LIU

Director of AMNR Lab, office 2-402.I

liusong@shanghaitech.edu.cn

郭敬明抄袭案

[编辑]

维基百科，自由的百科全书

郭敬明抄袭案，是指2003年至2006年的庄羽控诉郭敬明抄袭案，2006年北京市高级人民法院判决郭敬明小说《梦里花落知多少》抄袭庄羽小说《圈里圈外》成立。此案入选2006年北京十大知识产权典型案例^[1]，是最著名的中国知识产权官司之一。

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案件背景 [编辑]

郭敬明是新概念作文大赛一等奖得主，因2003年出版长篇小说《幻城》走红^[2]。郭敬明和韩寒两人被认为是少年作家中最受瞩目的人物，深受青少年欢迎^[3]。

2003年起，郭敬明在《萌芽》杂志上开始连载长篇小说《梦里花落知多少》，受到读者的欢迎^[4]。当年11月，《梦里花落知多少》小说由春风文艺出版社出版，不到一月时间已销售60万册^[5]。

但部分读者发现，郭敬明的这部《梦里花落知多少》，在人物性格和语言上，与女作家庄羽在2003年1月出版的小说《圈里圈外》相当雷同，质疑郭敬明抄袭庄羽。庄羽得知这一情况后，开始请律师维权，但郭敬明和春风文艺出版社则否认抄袭一事^[6]。

郭敬明道歉前的社会反响 [编辑]

支持庄羽 [编辑]

- 韩寒激烈批判郭敬明粉丝无视抄袭的态度^[22]。
- 张悦然在博客上发表《当郭敬明成为宗教^[23]》和《80后：一场“奥斯维辛”悲剧^[24]》，反对社会对抄袭现象的漠视和郭敬明粉丝对抄袭的无所谓态度。
- 王朔直斥郭敬明“不要脸”，“小偷”^[25]。网友发现王朔的小说《顽主》的对话也被郭敬明抄袭^[26]。
- 徐鹏、王晓虹、宋金强、吕晶等10位80后作家，于2006年6月20日发表《80后10青年作家致郭敬明的公开信》，信中呼吁郭敬明尽快道歉，否则将联手发动读者抵制其作品^[27]。
- 《纽约时报》上刊登撰稿人Aventurina King（中文名金小鱼）介绍郭敬明的《China's Pop Fiction》一文^[28]，有提及郭敬明抄袭官司等负面消息。但后来的国内媒体宣传却变成了“《纽约时报》评郭敬明为最成功作家”^[29]，与Aventurina King的原意不符。

支持郭敬明 [编辑]

- 郭敬明的部分粉丝对判决结果不满，甚至发出“抄袭有理”的声音^[30]。

Top 10 IP Cases from Chinese Court in 2019

- 一、瓦莱奥清洗系统公司与厦门卢卡斯汽车配件有限公司、厦门富可汽车配件有限公司、陈少强侵害发明专利权纠纷案〔最高人民法院（2019）最高法知民终2号民事判决书〕
- 二、本田技研工业株式会社与重庆恒胜鑫泰贸易有限公司、重庆恒胜集团有限公司侵害商标权纠纷案〔最高人民法院（2019）最高法民再138号民事判决书〕
- 三、上海俊客贸易有限公司与原国家工商行政管理总局商标评审委员会、姚洪军商标权无效宣告请求行政纠纷案〔北京市高级人民法院（2018）京行终137号行政判决书〕
- 四、明河社出版有限公司、完美世界（北京）软件有限公司与北京火谷网络科技股份有限公司、昆仑乐享网络技术有限公司、昆仑万维科技股份有限公司侵害改编权及不正当竞争纠纷案〔北京市高级人民法院（2018）京民终226号民事判决书〕
- 五、平衡身体公司与永康一恋运动器材有限公司侵害商标权纠纷案〔上海市浦东新区人民法院（2018）沪0115民初53351号民事判决书〕

Top 10 IP Cases from Chinese Court in 2019

六、深圳市腾讯计算机系统有限公司与谭发文因恶意提起知识产权诉讼损害责任纠纷案〔广东省高级人民法院（2019）粤民终407号民事判决书〕

七、苏州蜗牛数字科技股份有限公司与成都天象互动科技有限公司、北京爱奇艺科技有限公司侵害著作权纠纷案〔江苏省高级人民法院（2018）苏民终1054号民事判决书〕

八、杭州莫丽斯科技有限公司、奥普家居股份有限公司与浙江风尚建材股份有限公司、浙江现代新能源有限公司、云南晋美环保科技有限公司、盛林君侵害商标权及不正当竞争纠纷案〔浙江省高级人民法院（2019）浙民终22号民事判决书〕

九、河北山人雕塑有限公司与河北中鼎园林雕塑有限公司、遵义市播州区三合镇人民政府、遵义众和诚农业开发有限公司、贵州慧隆建设工程有限责任公司、贵州慧隆建设工程有限责任公司遵义分公司侵害著作权纠纷案〔贵州省高级人民法院（2019）黔民终449号民事判决书〕

十、厦门德乐盟科技有限公司、厦门兴恒昌贸易有限公司、杨明凤、杨茂淦假冒注册商标罪、销售假冒注册商标的商品罪案〔福建省厦门市中级人民法院（2018）闽02刑终632号刑事判决书〕

Intellectual Property is Asset!

国家知识产权局：2020年上半年全国专利商标质押金额超过850亿元

2020年07月09日11:02 | 来源：人民网-知识产权频道

T_r 小字号



据国家知识产权局新闻发言人胡文辉介绍，在知识产权保护和运用方面，2020年上半年，全国各省（区、市）专利侵权纠纷行政裁决案件总量5320件。全国专利商标质押金额853亿元，同比增长45%，质押项目数4678项，同比增长52%。其中，专利质押金额651亿元，同比增长61%，质押项目数4171项，同比增长54%；商标质押总金额202亿元，同比增长8.8%，质押项目数507项，同比增长34%。

What is intellectual property?

Intellectual property refers to **creations** of the **ideas, inventions, literary and artistic works; and symbols, names and images used in commerce.**



What is intellectual property rights?

Intellectual **property rights** are like any other property right. They allow creators, or owners, to **benefit from their own work** or investment in a creation.



Contents

- Categories of IP??
- When it Started??
- Why Promote and Protect IP?? The Average Person Benefit??
- Five Main Types Of IP Rights??
- Trade Secrets??
- Protections for Software – Software Copyrights??
- Violations of Software Copyrights??
- Open-Source: Consequences of Proprietary Software??
- Open Source Definition??
- Beneficial Consequences of Open-Source Software??

Categories of IP

Industrial Property:

Includes **patents** for inventions, trademarks, industrial designs.



CopyRight:

Covers literary works such as novels, poems and plays, films, music, artistic works, even programming (e.g., drawings, paintings, photographs and sculptures) etc.

When IP Started?

The importance of intellectual property was first recognized in the **Paris Convention for the Protection of Industrial Property (1883)** and the **Berne Convention for the Protection of Literary and Artistic Works (1886)**. Both treaties are administered by the World Intellectual Property Organization (WIPO).



Why Promote and Protect IP?



- First, the progress and well-being of humanity depends upon capacity to create and invent new works in the areas of technology and culture.
- Second, the legal protection of new creations encourages the commitment of additional resources for further innovation.
- Third, the promotion and protection of intellectual property makes economic growth, creates new jobs and industries.

The Average Person Benefit?

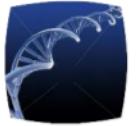


Some Examples: The multibillion dollar film, recording, publishing and software industries, would not exist without copyright protection?

Without the rewards provided to researchers and inventors would have little incentive to continue producing better and more efficient products for consumers?

Consumers would have no means to confidently buy products or services without reliable, international trademark protection and enforcement mechanisms to discourage counterfeiting and piracy??

Five Main Types of IP Rights?



Patients



Trade Mark



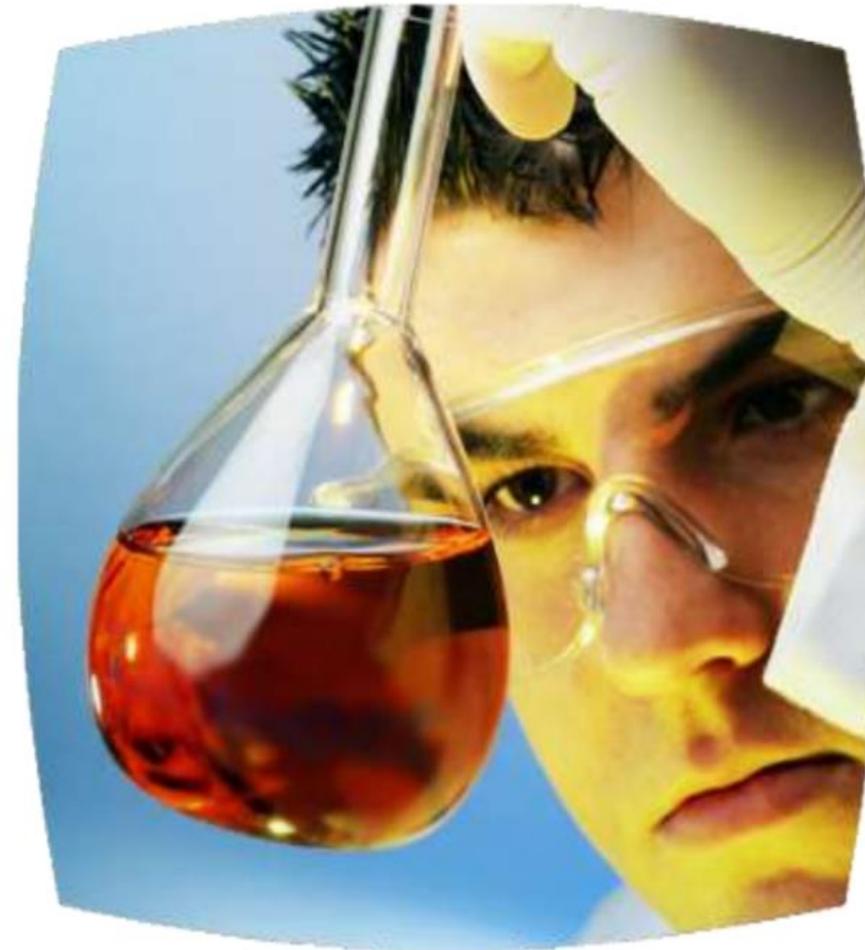
Copy Right



Industrial Design



Integrated Circuit Topography



What is a Patent?

- “Invention in Documented form”
A patent is an exclusive right granted for an invention.
- Technically Speaking
A product or process that provides a new way of doing something, or that offers a new technical solution to a problem.



What is a Patent?

New inventions or any new and useful improvement
of an existing invention

- Novel: must be new, first in the world
- Useful: functional and operative
- Inventive: must show ingenuity and innovative



Did You Know??

90%

of patents are for
improvements
to existing patented inventions

Find Improvements??



1926



1976

Protection Do Patents Offer?

Patent protection means **an invention cannot be commercially made, used, distributed or sold without the patent owner's consent.**

Patent rights are usually **enforced in courts** that, in most systems, hold the authority to stop patent infringement.

Conversely, a court can also declare a patent invalid upon a successful challenge by a third party.

Rights Do Patent Owners Have?

A **patent owner** has the right to decide who may or may not use the patented invention for the period **during which it is protected**.

Patent owners may give permission to, or license, other parties to use their inventions on mutually agreed terms.

What is a Trademark?

A trademark is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company.



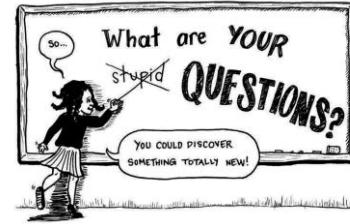
What is a Trademark?

- A “trade mark” means any sign capable of being
- Represented graphically which is capable of distinguishing goods or services
- A trade mark may, in particular, consist of words (including personal names), designs, letters, numerals or the shape of goods or their packaging

FedEx



Registered and Unregistered Trademark



BASIS FOR COMPARISON	REGISTERED TRADEMARK	UNREGISTERED TRADEMARK
Meaning	A registered trademark is any symbol, sign, word, etc. used as a trademark by the company and registered under the Trade Mark Act, 1999.	An unregistered trademark refers to any symbol, sign, word, etc., used by the company as a trademark, but not at all registered.
Symbol		
Governed by	Trade Mark Act, 1999	Common Law
Validity	Prima Facie validity is available.	Owner has to prove the validity of the mark.
Burden of proof	When the validity is challenged, it lies with the opponent, in the initial period.	When the validity is challenged, it lies with the owner.
Location	Countrywide protection is available.	Owner has to prove the area, in which it has gained goodwill.

Steps for Trademark Registration

1. Trademark search and selection
2. Application to the Registrar for trademark registration
3. Application number allotted to the applicant
4. Data entry
5. Scanning
6. Examination and Examination report is dispatched, then one of the two cases discusses below may apply:
 - **Case 1: Accepted:** Journal Publication – Manuscript, Hindi Translation, Scanning, Composing
 - Wait for Opposition; then one of the two cases may apply:
 - **Case 1 (a): Registration:** Preparation of Registration Certificates and Checking for Associated Marks
 - Remove the “TM” symbol and start using “R in a circle” next to your mark.
 - Renewal or Post Registration Changes
 - **Case 1 (b): Opposition:** Hearing is arranged, which is taken by the Hearing Officers. Further, one of the two cases may apply:
 - **Case 1 (b) (i):** Application to Proceed for Registration, Case 1 (a) will apply.
 - **Case 1 (b) (ii):** If the opposition is allowed, but the application is refused, then also the case is reviewed by the Intellectual Property Appellate Board.
- **Case 2: Objected:** Show cause hearing, then also one of the two cases may apply:
 - **Case 2 (a):** Accepted, case 1 will follow.
 - **Case 2 (b):** Refused or withdrawn, then the case goes to the Intellectual Property Appellate Board.

Copy Right

Rights derived from any original literary, dramatic, musical or artistic work can be registered from the moment this work is created.



Copy Right

Copyright is automatic upon creation. However, it's a good idea to:

- Have your original work witnessed and dated
- Register your copyright
- Use proper marking for your copyright ©
- Document details of any collaboration in respect of the work.



What Rights do Copyright Provide?

The creators of works protected by copyright, and their heirs and successors (generally referred to as “right holders”), have certain basic rights under copyright law. They hold the exclusive right to use or authorize others to use the work on agreed terms.

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Simultaneous Precision Assembly of Multiple Objects through Coordinated Micro-robot Manipulation

Song LIU, Yuyu Jia, Y.F. Li, Yao Guo, Haojian Lu

2021 IEEE International Conference on Robotics and Automation (ICRA)

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Song LIU

Signature

11-03-2021

Date (dd-mm-yyyy)

Famous Copyright Infringement Case 1

1. Rogers vs. Koons



Photograph: Art Rogers – 1985; Polychrome: Jeff Koons – 1988 (both via [The Design Observer Group](#))

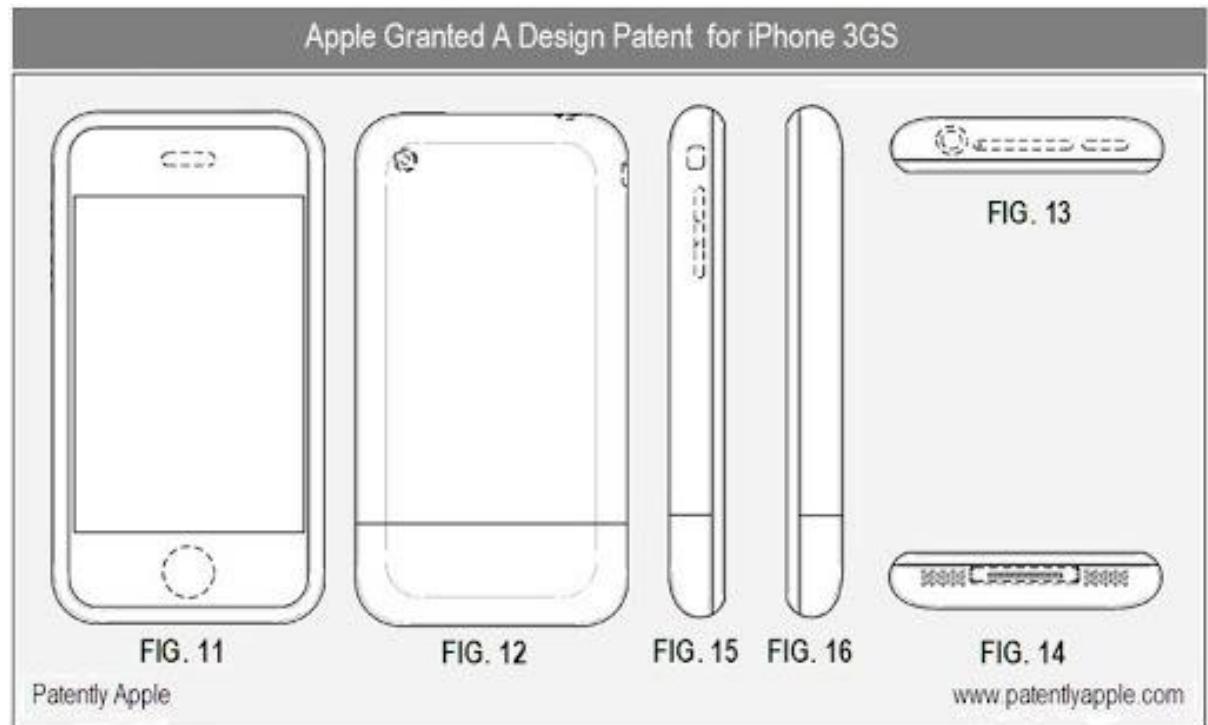
Famous Copyright Infringement Case 2



*Photograph: Mannie Garcia – 2006 (via [The New York Times](#)); Poster: Shepard Fairey – 2008
(via [Wikipedia](#))*

Industrial Design

The visual features of shape, configuration, pattern (or any combination of these features) applied to a finished article made by hand, tool or machine.



Industrial Design

- Designs are such as those featured in these products, are known for their visual appeal.
- Design must be original
- Can be two or three dimensional.

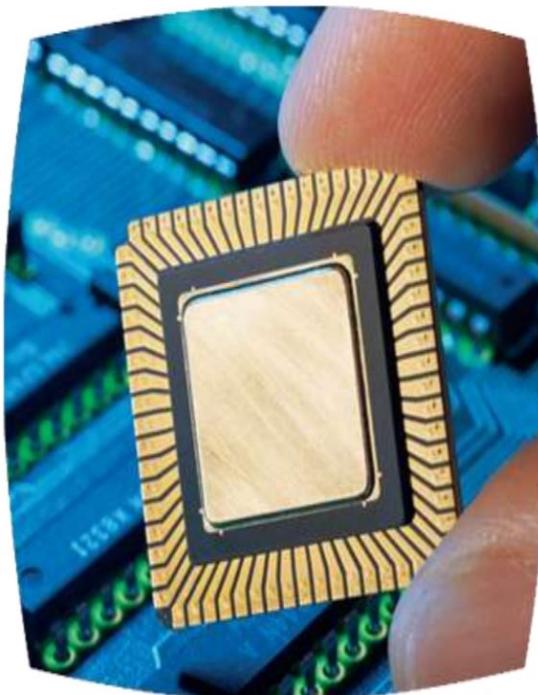


IC's Topography

Configuration of electronic circuits embodied in integrated circuit products or layout designs.

Used in many technologies, such as:

- Computers
- Automobiles
- Pacemakers
- Industrial Robots
- Cameras
- Spacecraft



Trade Secret

Confidential piece of intellectual property that gives company a competitive advantage.

Employees are asked to make confidentiality agreement

Examples: Formulas, customers' lists, strategic plans, proprietary design

- Reverse engineering allowed (buying a can of Coca Cola and trying to figure out it's formula is legal)
- May be compromised when employees leave firm

Protections for Software—Software Copyrights

Copyright protection began 1964

What gets copyrighted?

Expression of idea, not idea itself

Object program (.exe), not source program

- Because source codes are secrets
- Companies deliver .exe

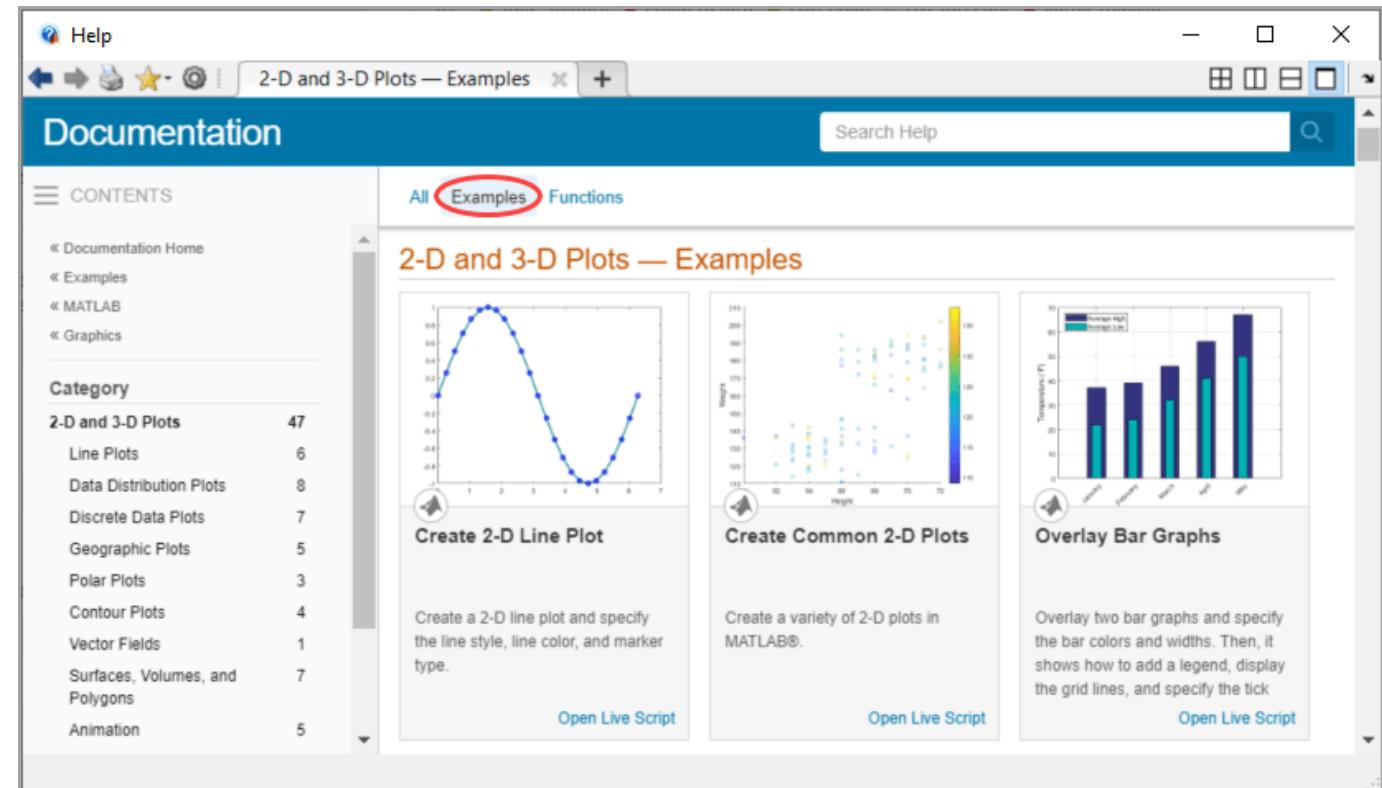
Companies treat source code as a trade secret

Violations of Software Copyrights

- **Copying** a program to give or sell to someone else

- **Preloading** a program onto the hard disk of a computer being sold

- **Distributing** a program over the Internet



Safe Software Development

Reverse engineering **okay**

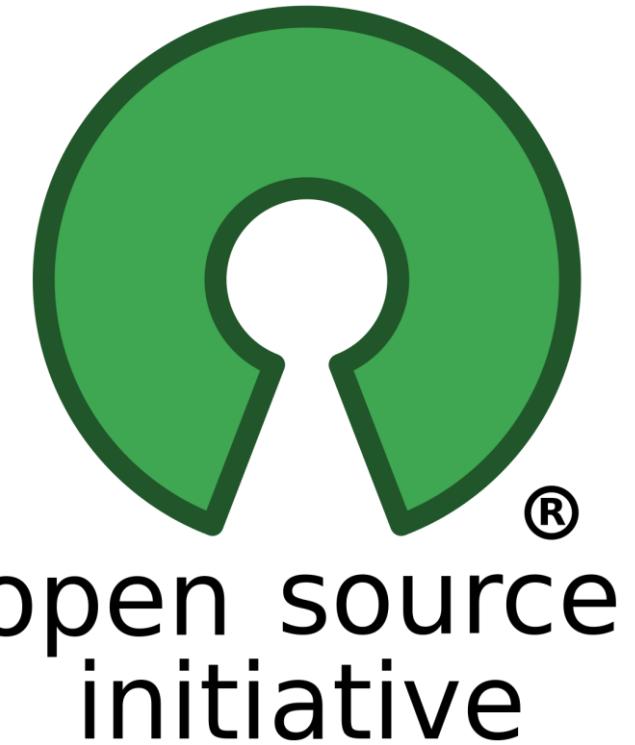
Companies must protect against unconscious copying

Making the same duplicate of a program because programmers move from firm to another

Solution: “open source” software development strategy

Open-Source Software: Consequences of Proprietary Software

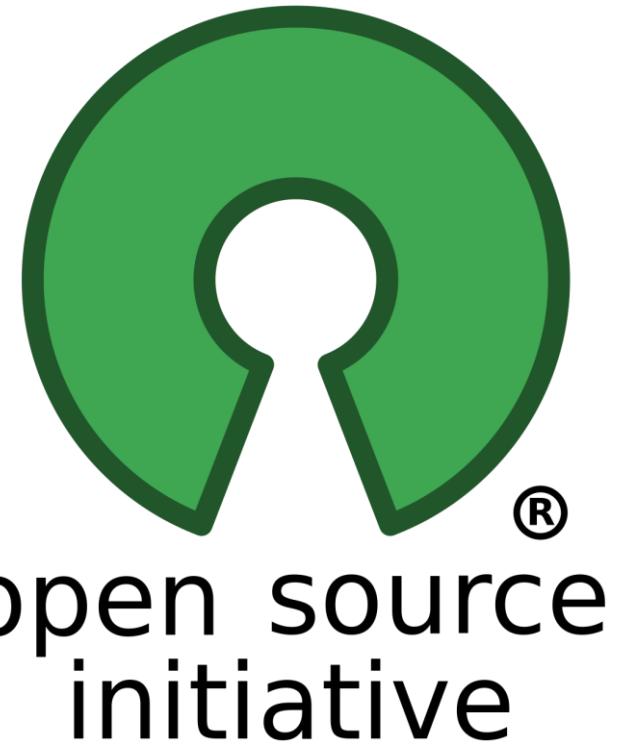
- Increasingly harsh measures being taken to enforce copyrights (infringe our liberties)
- This act was created in an era with difficulties to make copies. This is not the case NOW.
- Copyrights are not serving their purpose of promoting progress. They make authors wealthy
- It is wrong to allow someone to “own” a piece of intellectual property
- Cooperation is more important than copyright.



Open-Source Software: Consequences of Proprietary Software

Licenses have the following characteristics:

- No restrictions preventing others from selling or giving away software
- Source code included in distribution, No restrictions preventing others from modifying source code
- No restrictions regarding how people can use software.
They can exchange or sell.
- Same rights apply to everyone receiving redistributions of the software (copyleft)
- NOTE: Nothing states that Open Source SW must be given FREE.



Beneficial Consequences of Open Source Software



- Gives everyone opportunity to improve program
- New versions of programs appear more frequently
- Eliminates tension between obeying law and helping others
- Programs belong to entire community
- Shifts focus from manufacturing to service

Buying Open Source SW with easy installation steps

Providing great manuals

Providing support after sales

Best Practice of Open Source Initiative



A close-up profile of Captain Jack Sparrow from the Pirates of the Caribbean movies. He is wearing his signature red feathered hat and has a serious, contemplative expression. He is holding a long, thin wooden staff or rudder in his right hand.

The problem
is not the
problem.
The problem
is your
attitude about
the problem.

Do you
understand?

- Captain Jack Sparrow

**HAVE A
GOOD NIGHT!**