Why does software have EULA? [closed]

Asked 15 years, 9 months ago Modified 14 years, 9 months ago

Viewed 3k times

18

Closed. This question is off-topic. It is not currently accepting answers.

Want to improve this question? Update the question so it's on-topic for Stack Overflow.

Closed 11 years ago.

Improve this question

This is the only product that I know that a consumer must agree to something that only lawyer can (something) understand. I'm sure car accidents kill more people each year than software accidents. But I don't sign anything like an EULA when I buy a car.

So why does software have EULA? Were there a bad accident that triggered the need for software companies to protect themselves? (and what was the first software that had EULA?)

[Update] Just to clear my point: I don't understand why software have EULA. No other product that I can think of

does (not even gun)! So what makes software different that this product needs some sort of "liability limitations"?

By the way, Wikipedia says that "The legal status of shrink-wrap licenses in the US is somewhat unclear."

licensing history eula

Share

Improve this question

Follow

edited Mar 1, 2009 at 7:22

Beep beep

19.1k • 12 • 67 • 78

asked Feb 28, 2009 at 19:00

Thierry Roy

8,502 • 10 • 61 • 86

Why you don't work without a contract? – Mehrdad Afshari Feb 28, 2009 at 19:03

I think this is a valid question. Many people do read their EULA, but there may be a lot of weird legal stuff in there, which may be cause for concern. And on top of that, people are going to use stuff in the way they want, so what is the real point of an EULA? – HyperCas Feb 28, 2009 at 19:08

note: you don't need to be licensed to own and operate a computer. – Steven Evers Feb 28, 2009 at 19:18

1 Regarding the Wikipedia quote: In some countries outside the US, an EULA that is only displayed to the user *after* he purchased the software (license) is considered not be legally binding. Not sure how this plays out in the US, though. – Treb Mar 2, 2009 at 9:22

@Mehrdad Afshari - an EULA is not a contract - at least not if you're referring to one of those shrink-wrapped license style EULAs. If you imagine these to be contracts, you would have to conclude that they are also "conditions subsequent" - meaning conditions imposed by one party on the other after the contract was finalised, which are legally unenforcable. If you buy your software from an online retailer, for example, what exactly are the odds that the EULA conditions were brought to your attention so you could accept/refuse them before the agreement was finalised (ie payment was accepted). – user180247 Oct 1, 2010 at 23:36

10 Answers

Sorted by: Highest score (default)

28

The difference is that you are purchasing a license to use software, not the software itself (which the software company still owns). The EULA stipulates the method with which you can use the software. Similar agreements are in place when you rent things (e.g. a home), lease equipment, etc.

Share Improve this answer

Follow

answered Feb 28, 2009 at 19:05

Beep beep

19.1k ● 12 ● 67 ● 78

Which doesn't answer the question. When I give money to a clerk in exchange for software, it's mine just like a book is. Why is software handled differently? – David Thornley Dec 28, 2009 at 22:20

3 Actually, the book is yours but the rights to the book are not. Just as in software, you purchased the physical media, but are bound by law on how you can use it. In both cases you

own the media ... you can do whatever you wish with it. However, you cannot legally use either however you want. The difference between a book and software is that the legal system has already carefully defined the appropriate Use of printed media, while software they provide some leeway for the copyright holders to define the allowed use. – Beep beep Dec 29, 2009 at 4:51

@Jess: Not sure what country's laws you describe, but that's not how copyright works in the USA. The owner of the media (aka the owner of the "copy") has the right to use the software with a computer, without permission from the copyright owner. So there is no need for a license merely to use software. The reality is, that in the USA software publishers that use EULAs believe that **you do not own the media**. That's right. They claim they own the *physical plastic disc*. That's what they mean by "licensed, not sold". See Vernor v. Autodesk. See also 17 USC 117. – Dan Moulding Sep 20, 2010 at 2:14

@Dan - I was describing the U.S.. I'm not sure how Vernor v. Autodesk is relevant, since that is about redistribution. Even in a redistribution scenario, the rights of the licensor (which have been transfered to the new owner of those rights) are still restricted by the EULA. – Beep beep Sep 20, 2010 at 5:12

1 @Jess - copyright law applies equally to books and software. The statement in a book simply tells you what your rights are - it can grant more or less, but cannot invent new rights to grant or exclude. Yet in software, this arbitrary invention of new rights to grant or exclude, which aren't defined by copyright law, is normal. So how come that's enforcable? – user180247 Oct 1, 2010 at 23:48

An EULA is designed to be a contract that conveys or limits “usage” rights, hence the name End User Licensing

Agreement. It has nothing more to do with a copyright than the mortgage loan contract that I have with my bank. That is why the legality of shrink-wrapped licenses is questionable. It is a contract that you do not get to read until after you purchase a product. It is clear from many responses here that the vast majority of people have not wrapped their heads around the idea the copyright does not extend to “usage” rights.

One responder wrote “Actually, the book is yours but the rights to the book are not. Just as in software, you purchased the physical media, but are bound by law on how you can use it.” Nothing could be farther from the truth. There is no law that restricts how you can use the book. Any restriction on usage would have to be agreed upon by you and the retailer as part of the sale.

Consider that in the absence of copyright, the copying and distribution of books would be perfectly legal. A book would be typical tangible property and nothing more. Copyright limits your ability to legally copy and distribute the content of the book. No additional agreement is necessary. Copyright in no way dictates how you can use your book and copyright law does not convey to the author the power to convey, limit, or negotiate “usage” rights. The only way that they can limit usage rights is through a separate contract that would have to be completed as part of the sale or rental.

There was some confusion regarding the GPL. The GPL is not an EULA. It is a copyright license that permits

copying and distribution of the content so long as you comply with the restrictions of the license. In absence of the GPL (say you choose not to accept it), you can still use the software, but you are restricted from copying or distributing the software by Copyright Law.

EULA exist for various purposes. Companies that develop software want to negotiate a position that puts them at the least risk and gives them maximum leverage.

Share Improve this answer

Follow

answered Mar 16, 2010 at 14:55

user294826

91 ● 1 ● 1

> Wow, the one answer that actually gets it right and it has practically no upvotes. Just goes to show that most people don't actually understand the most fundamental concepts of copyright law or EULAs. Makes me sad. – Dan Moulding Sep 20, 2010 at 2:25

8

If a consumer receives software without any license, consider what they might consider their rights:

- They may believe they can copy the software, as many times as they want.
- They may consider re-selling the software, and still keeping a copy for them self.
- They may believe the software must work perfectly, with zero bugs (as they understand a bug)

- They may believe it is fully waranteed against any perceived defect, and try to return it, for a full refund, at any point in the future.

In short, the EULA disabuses consumers of these notions. It defines ownership and copyright of the software, limits on its use, distribution, features, and quality.

Now it is true that as lawyers get involved in the EULAs more and more, stranger and stranger provisions creep in, such as provisions that you cannot review the software on a blog, or you cannot bad-mouth the software to the press, or that the publisher owns content created with the software.

But fundamentally, the EULA is supposed to be about the producer and the consumer coming to an understanding of what is, and is not, an acceptable use of the software.

Share Improve this answer Follow

answered Feb 28, 2009 at 19:10

abelenky

64.6k ● 23 ● 114 ● 161

The consumer can copy the software as many times as they want. The consumer bought it; they can resell it. These two "restrictions" are NOT supported by current copyright law. However, software vendors want them, and we want their software. So we agree. – S.Lott Feb 28, 2009 at 19:25

How do you reconcile that with LuckyLindy's answer? – David Z Feb 28, 2009 at 21:41

3 @S.Lott: Although IANAL, I disagree. Copyright is exactly that: the right-to-copy, which belongs solely to the author. The consumer has no right to copy or re-license software. The EULA clearly spells out what is already in law, in this regard. – abelenky Feb 28, 2009 at 22:00

5

Actually, what is quite funny, in Germany EULAs are pretty much legally-non binding, since you only get to see them after the purchase, so for us the answer to your question is: *To **intimidate** the user from doing stuff the company does not want*

Share Improve this answer

Follow

answered Feb 28, 2009 at 19:57

danielschemmel

11.1k ● 1 ● 38 ● 59

Do companies get around this by making those who purchase software (particularly online) accept a similar agreement prior to purchase? – Beep beep Mar 1, 2009 at 6:09

Pretty much everything is handled exactly like it would be in the US, but retail packages who give you an EULA to accept after purchase are not legally binding, which in practice is pretty unimportant though, since a EULA that just reinforces the copyright is useless anyway. – danielschemmel Mar 1, 2009 at 18:02

3

There are basically three reasons for EULAs:

1. Software is much more copyable than any other product I can think of. It is almost never left on its

distribution medium. That creates a huge temptation to, for example, buy one copy of Windows and install it on all of a company's thousand computers. Developers want to explicitly lay out how many computers the software may be installed on.

2. Software often has undetected problems. Even the best QA department never finds all the bugs in a software product. Developers know this and want to be legally covered.

3. Software can often be easy to take apart to discover a developer's trade secrets or other information the developer doesn't want others to know. Developers want to legally restrict this to protect their advantage over competitors.

Of course, there are sometimes other reasons for other terms. EULAs for Apple's Mac applications, for example, usually state that you can only install the software on an Apple-branded computer; this ensures that Apple's software (which is usually sold much cheaper than it would be from any other developer) increases sales of Apple hardware. The GNU GPL tries to ensure that the innovations in derivative software remain available to the community that developed the original. There are as many reasons as there are clauses.

Share Improve this answer

Follow

answered Feb 28, 2009 at 19:17

Becca Royal-Gordon

17.8k ● 7 ● 58 ● 92

1 I believe the GPL is actually not an EULA, technically speaking. The GPL conditionally grants rights which would ordinarily be forbidden by copyright law, whereas an EULA places additional restrictions above and beyond copyright law. But I'm not a lawyer ;-) – David Z Feb 28, 2009 at 21:44

1 It's actually the other way around. A license is a document granting rights you ordinarily wouldn't have. So the GPL is a license, but most EULAs are actually not; they're contracts. – Becca Royal-Gordon Mar 1, 2009 at 13:47

@Brent - EULA = End-User License Agreement. Your definition of license is incomplete. There are plenty of licenses that grant right only in exchange for normal rights denied. – jmucchiello Jul 5, 2009 at 4:06

1

It depends on the exact wording of the EULA. Often, it's written to reinforce existing laws, such as copyright, by directly informing the user that it's unlawful to copy the program. It also adds on other restrictions such as no reverse engineering, restricting the intellectual property.

Additional clauses may include "not to be used in nuclear projects" or similar. This is merely covering the developer's bases, as it is extremely unlikely that a nuclear system developer would use a non-realtime, non-approved system without extreme amounts of research.

A further clause could restrict certain classes of users, such as military or government, which the developer feels strongly against.

As for which software had the first EULA, I have no idea.

Share Improve this answer

Follow

answered Feb 28, 2009 at 19:06

Kevin Lacquement

5,117 ● 3 ● 26 ● 30

1

Cars and guns technically have something like a EULA... we just call them "licenses". You have to learn the limitations and rules of their operation, then take some tests and sign some papers.

Share Improve this answer

Follow

answered Feb 28, 2009 at 19:17

gnovice

126k ● 16 ● 258 ● 363

Why was this down-voted exactly? – gnovice Feb 28, 2009 at 19:22

0

Nobody has mentioned the obligations of the provider, which are often in the EULA too. If I make your software a critical piece of my corporate infrastructure and you go bust I want to be able to get my hands on the code so your failure doesn't precipitate mine.

As someone said, this is more akin to a rental agreement than a purchase agreement, which is why the analogy with a gun does not really apply.

Share Improve this answer

Follow

answered Feb 28, 2009 at 19:20

Simon

80.6k ● 26 ● 92 ● 119

Those agreements are typically in contracts negotiated and signed before purchase, not in EULAs. EULAs are normally just limitations on rights (which may or may not be enforceable depending on jurisdiction). – David Thornley Dec 28, 2009 at 22:22

0

For proprietary software, License tells about your right to **use specific software copy** and impossibility to re-sell it, also your and software authors rights and charges

For open source software, License also tells about your right and charge about source code (**distribute, do not do that, do that with limitations**)

Share Improve this answer

Follow

answered Feb 28, 2009 at 19:37

abatishchev

100k ● 88 ● 301 ● 442

0

When you use a gun at a firing range, don't you have to sign some type of release or waiver? The logic is similar.

Share Improve this answer

Follow

answered Mar 2, 2009 at 22:12

Andrew

1,775 ● 2 ● 17 ● 24