

**<div/>
developers
in
vicenza**

Open Source Software – Licenze e Utilizzo

Istruzioni per includere FOSS nel tuo progetto

Avv. Cosetta Masi

Developers in Vicenza – 21st May 2020

AGENDA

1. THE FUNDAMENTALS: SOFTWARE LICENSING
2. THE FUNDAMENTALS: ORIGINS
3. THE FUNDAMENTALS: DEFINITION
4. LICENSING MODEL
5. THE GREAT DIVIDE: COPYLEFT E NON COPYLEFT
6. LICENSE COMPATIBILITY
7. COMMON OBLIGATIONS UNDER FOSS LICENSES
8. NOT ONLY SOFTWARE
9. TODAY'S TAKE AWAY

1. THE FUNDAMENTALS: SOFTWARE LICENSING

SOFTWARE IS PROTECTED BY INTELLECTUAL
PROPERTY RIGHTS

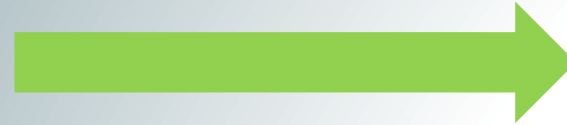
* COPYRIGHT *

VS

PATENTS

1. THE FUNDAMENTALS: SOFTWARE LICENSING

RIGHTHOLDER



RIGHTS

- ✓ Developer
- ✓ Corporation employing the developer
- ✓ Corporation who assigned the development of the software in outsourcing
- ✓ Subsequent buyer of the IPRS on the software

- ✓ Use/run
- ✓ Copy
- ✓ Modify – create derivatives
- ✓ Distribute
- ✓ Make available/rent
- ✓ Publicly display
- ✓ Sublicense

...

2. THE FUNDAMENTALS: ORIGINS



Richard Stallman
and his argument
with the Xerox
printer during his
time at the MIT

Source: <https://hackaday.com/2016/01/13/stallmans-one-mistake/>

2. THE FUNDAMENTALS: ORIGINS

1989: GPLv1

1991: GPLv2 + LGPLv2

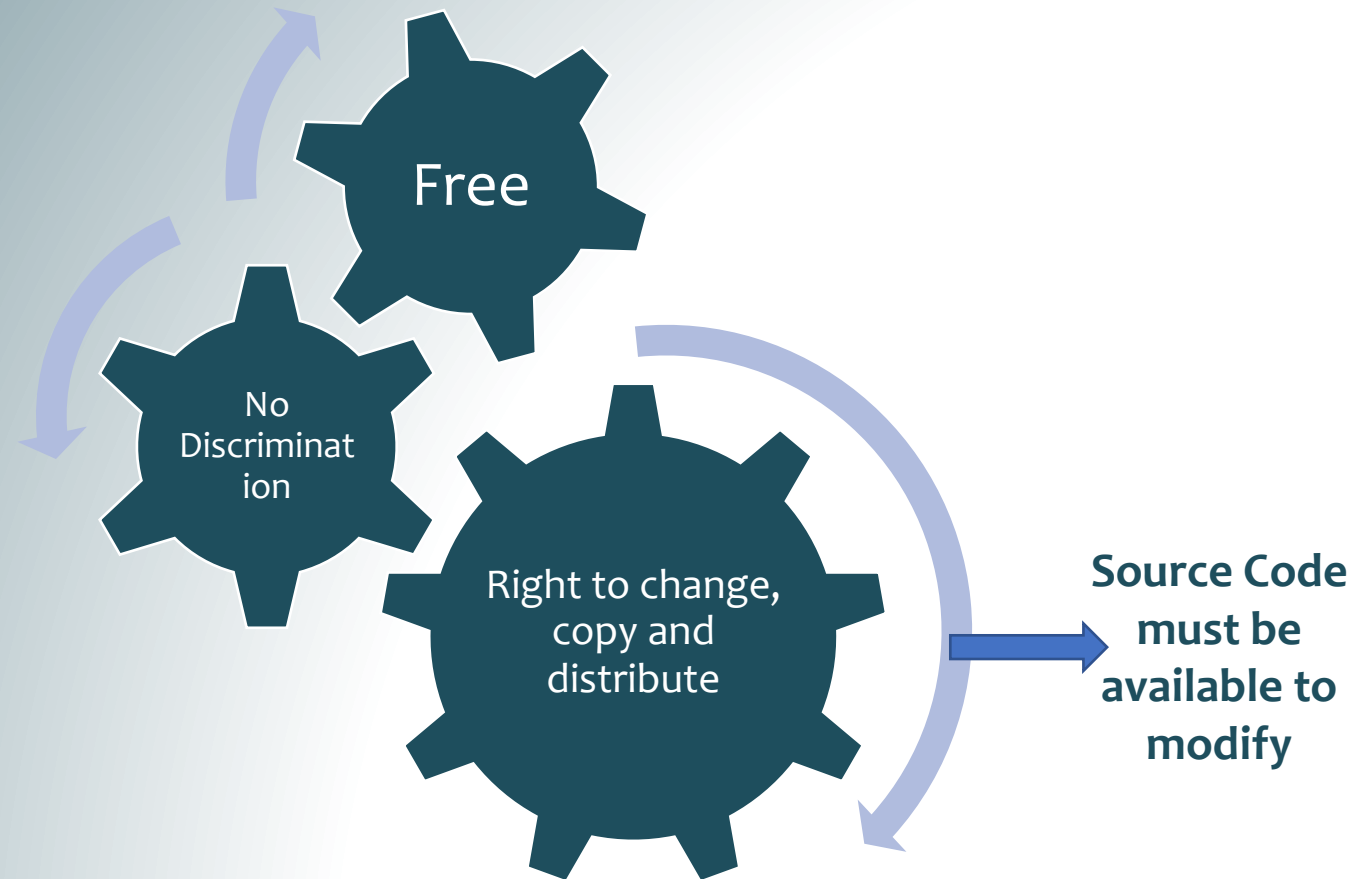
1999: LGPLv2.1

2007: GPLv3 + LGPLv3 + Affero GPLv3

3. THE FUNDAMENTALS: DEFINITION

OSI – Open Source Initiative

In 1998 provided a [definition](#) of FOSS, which has not been changed since 2007.



82

OSI approved
FOSS licenses

3. THE FUNDAMENTALS: DEFINITION

“Open Source Software” shall include any software licensed under any of the licenses: i) meeting the requirements set forth at <http://www.opensource.org/docs/definition.php>; or ii) any of the licenses listed at <http://www.opensource.org/licenses>

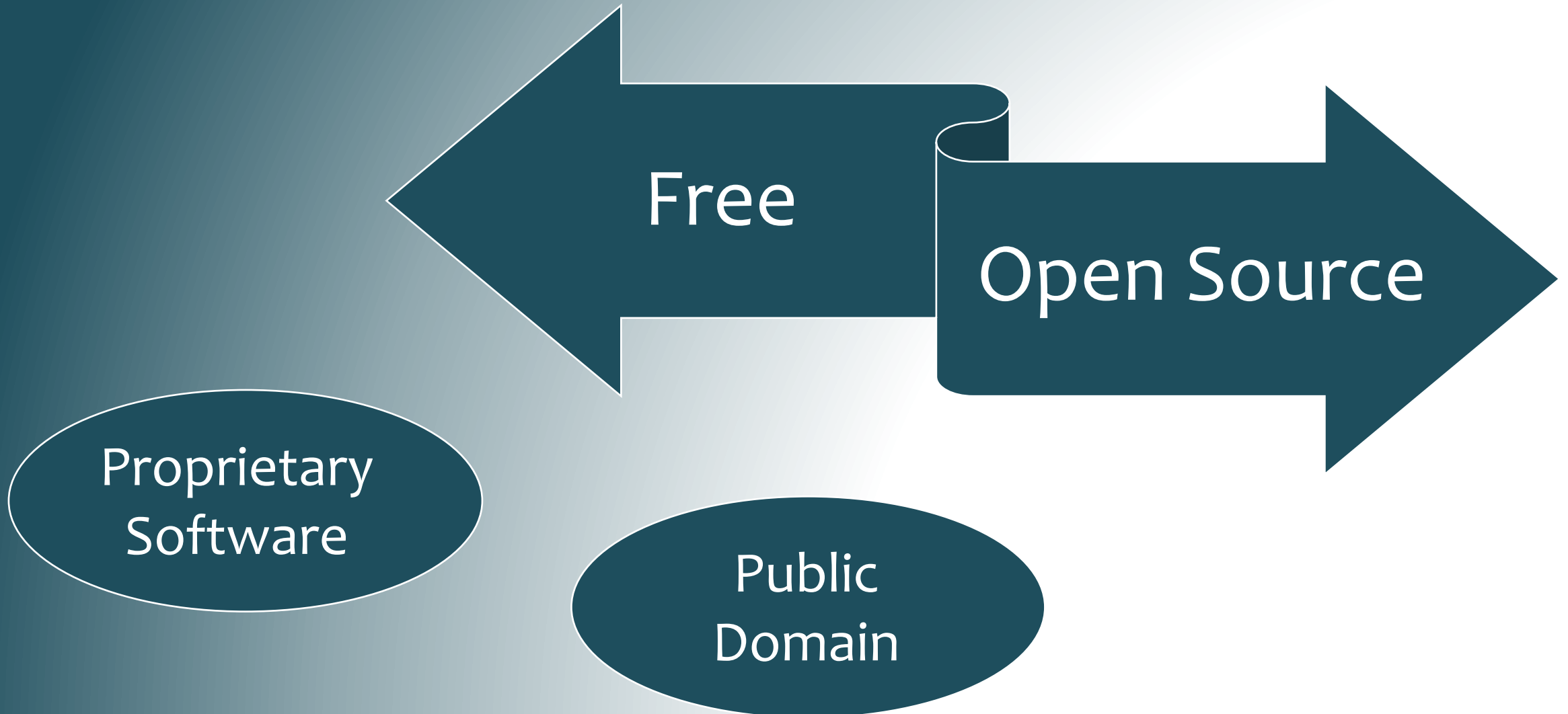


3. THE FUNDAMENTALS: DEFINITION



Source:
<https://resources.whitesourcesoftware.com/blog-whitesource/top-open-source-licenses-trends-and-predictions>

3. THE FUNDAMENTALS: DEFINITION



3. THE FUNDAMENTALS: DEFINITION

If you are in doubt whether a license is a FOSS licence

 Check the OSI Database

Check with your trusted legal advisor

? FOSS ?

3. THE FUNDAMENTALS: DEFINITION

DO WHAT THE FUCK YOU WANT TO PUBLIC LICENSE

Version 2, December 2004

Copyright (C) 2004 John Doe <jd@enterpriseoss.com>

Everyone is permitted to copy and distribute verbatim or modified copies of this license document, and changing it is allowed as long as the name is changed.

DO WHAT THE FUCK YOU WANT TO PUBLIC LICENSE
TERMS AND CONDITIONS FOR COPYING, DISTRIBUTION AND MODIFICATION

o. You just DO WHAT THE FUCK YOU WANT TO.

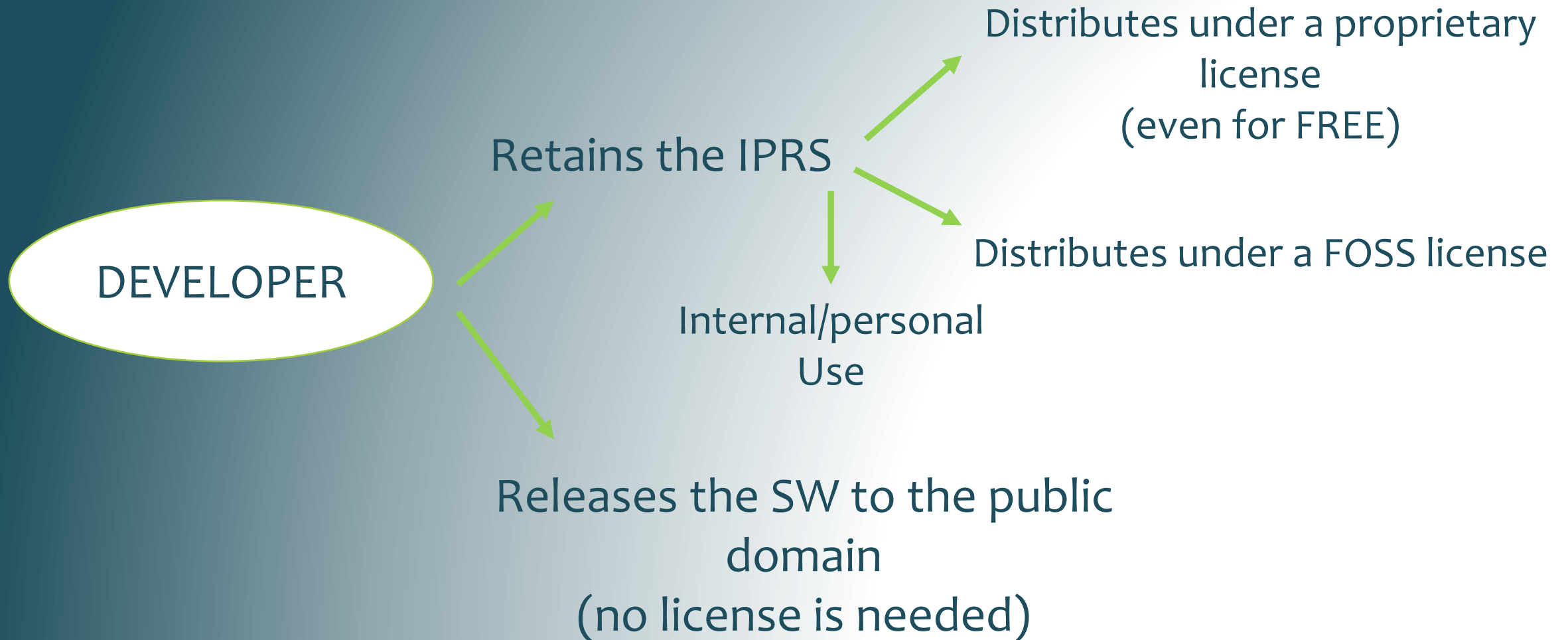
3. THE FUNDAMENTALS: DEFINITION

? FOSS ?

All software products available for download from associated website(s), unless labelled otherwise, are provided as freeware.

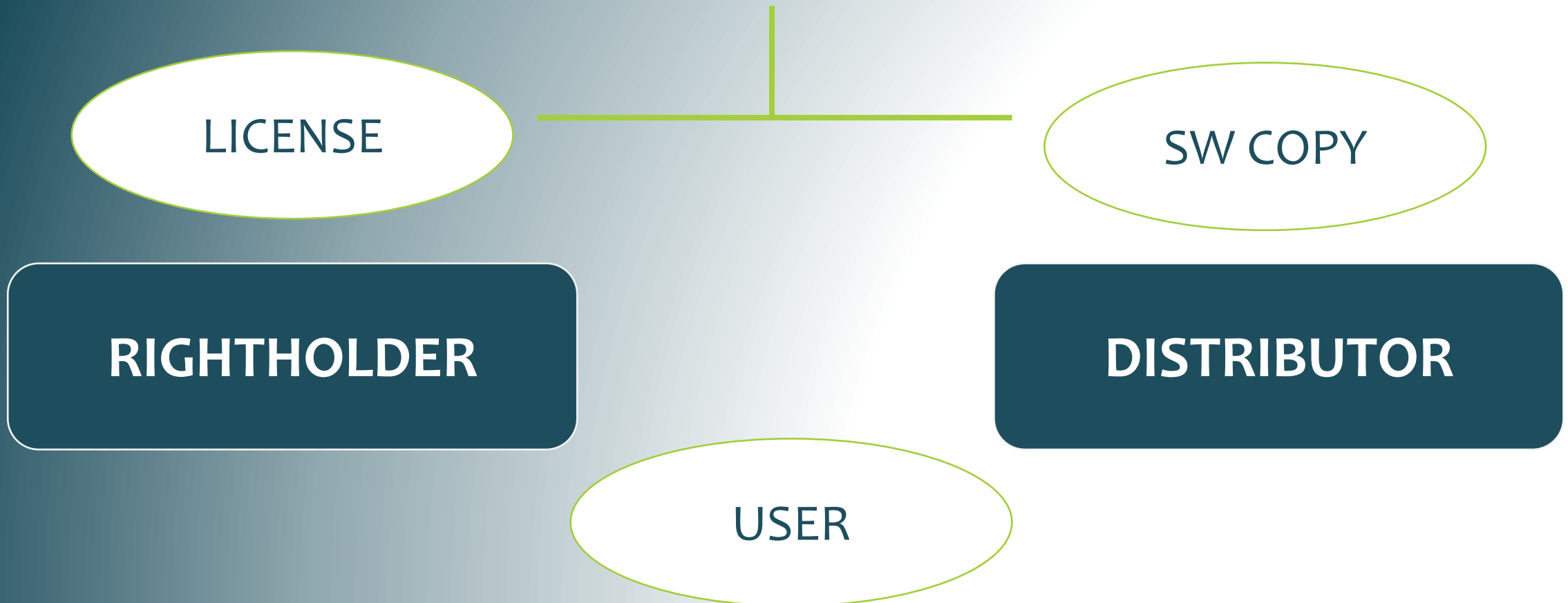
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3. THE FUNDAMENTALS: DEFINITION

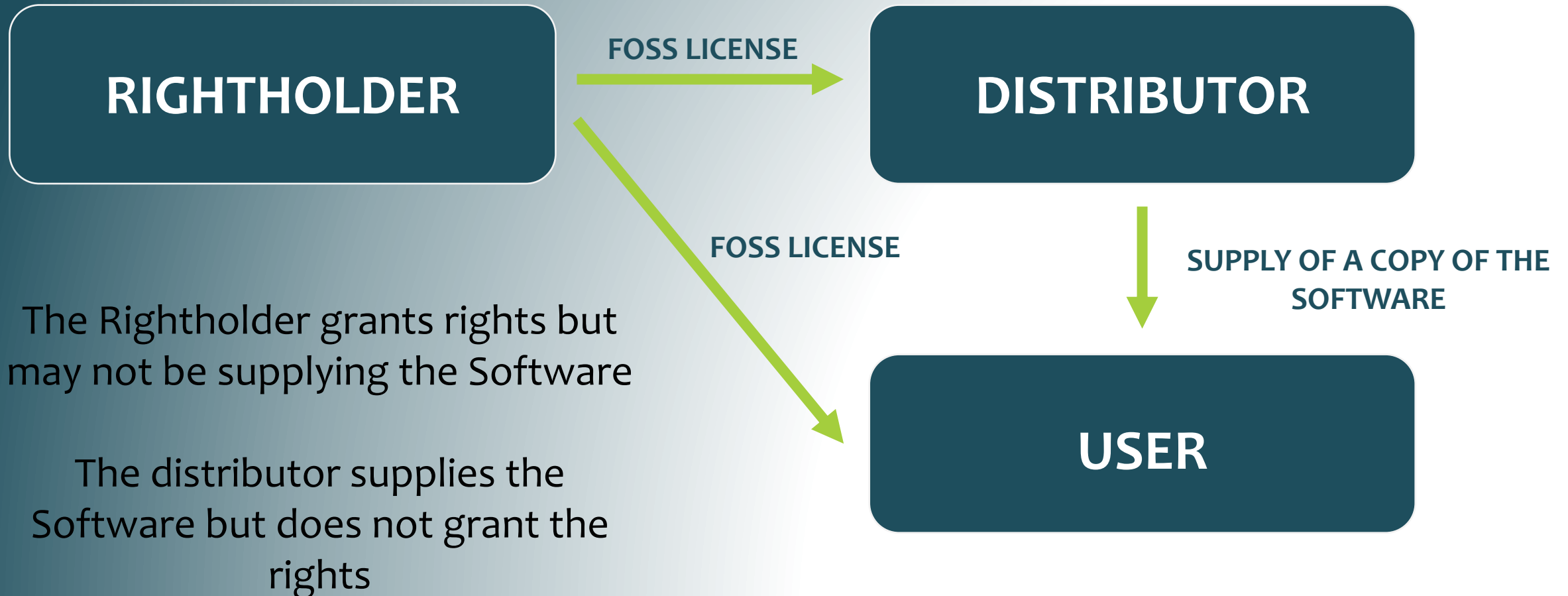


4. LICENSING MODEL

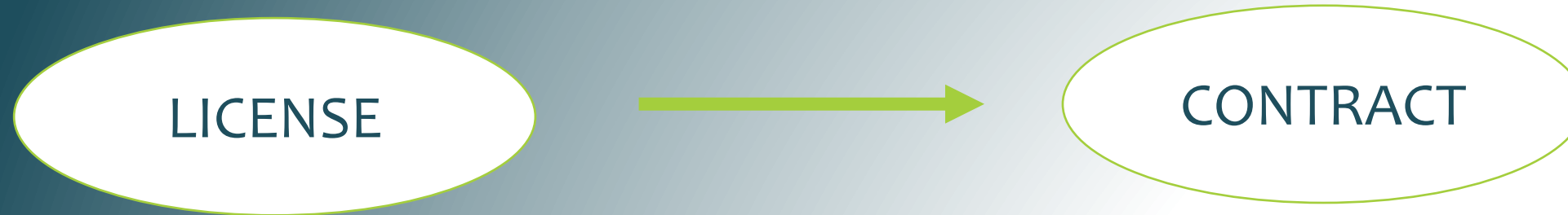
There are
TWO SEPARATE GOODS



4. LICENSING MODEL



4. LICENSING MODEL



- ✓ License offer is incorporated in the license text
- ✓ The offer is deemed accepted once the user runs the software and/or performs another activity which requires a license

NO NEED OF A PERSONAL CONTACT!

4. LICENSING MODEL

BUSINESS MODELS FOR FOSS

(use of third parties' FOSS)

- ✓ Distribution of larger works (see limitations in the following)
 - ✓ Customizations
 - ✓ Warranty
- ✓ Ancillary services (e.g. Installation, support and maintenance)
 - ✓ Supply of a physical copy

4. LICENSING MODEL

BUSINESS MODELS FOR FOSS

(license your products under FOSS)

- ✓ Double licensing
- ✓ Increase market presence/reputation
- ✓ Improve the product via contributions

? QUESTION TIME ?

5. THE GREAT DIVIDE: COPYLEFT and NON-COPYLEFT

COPYLEFT

The FOSS license requires that derivatives and/or larger works of the original code are distributed under the same license of the original code.
PROPRIETARY LICENSES AS WELL AS OTHER FOSS LICENSES CANNOT APPLY

NON-COPYLEFT

Larger works and/or derivatives may be distributed under a license of choice of the distributor (including a proprietary license)

5. THE GREAT DIVIDE: COPYLEFT E NON COPYLEFT

GPLv1

2. You may modify your copy or copies of the Program or any portion of it, thus forming a work based on the Program, and copy and distribute such modifications or work under the terms of Section 1 above, provided that you also meet all of these conditions:

a) [...].

b) You must cause any work that you distribute or publish, that in whole or in part contains or is derived from the Program or any part thereof, to be licensed as a whole at no charge to all third parties under the terms of this License.

c) [...]

5. THE GREAT DIVIDE: COPYLEFT E NON COPYLEFT

**COPYLEFT FOSS LICENSES DO
NOT REQUIRE TO
CONTRIBUTE THE DERIVATIVE
OR THE LARGER WORK TO
THE FOSS PROJECT AND/OR
TO THE PUBLIC**

5. THE GREAT DIVIDE: COPYLEFT E NON COPYLEFT

STRONG COPYLEFT

ALL changes and derivatives **MUST** be distributed under the same FOSS license

WEAK COPYLEFT

Only some changes and derivatives must be distributed under the same FOSS license.

5. THE GREAT DIVIDE: COPYLEFT E NON COPYLEFT

LGPLv.2.1

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, [...].

5. THE GREAT DIVIDE: COPYLEFT E NON COPYLEFT

What is a 'derivative work'?

- ✓ Formal parameter: the code is compiled in a sole executable code
 - ✓ Functional parameter: are the components dependant on each other?
Does the same component work with other programs?



If yes, it may be argued in favour of the qualification as 'derivative work'

If yes, it may be argued against the qualification as 'derivative work'



- ✓ Do the components use interfaces to communicate?
- ✓ Do the components use system calls to communicate?

5. THE GREAT DIVIDE: COPYLEFT E NON COPYLEFT

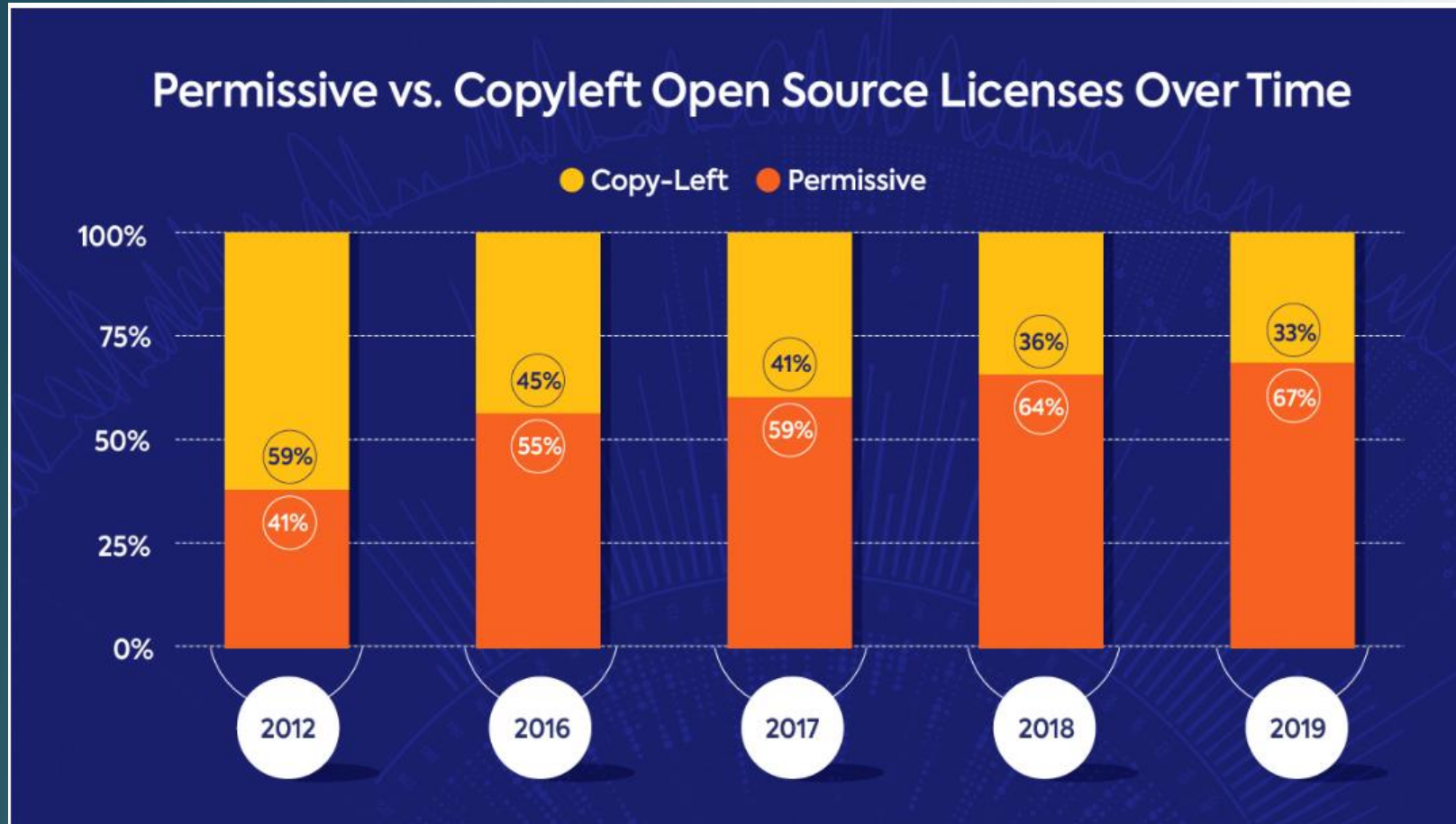
Copyleft

- GNU licenses (GPLv3, LGPLv3, Affero GPL v3, GPLv2..)
- MPL 2.0 (Mozilla Public License)
- EPL 1.0 (Eclipse Public License)

Non Copyleft

- MIT
- BSD (all versions)
- Apache
- ErlPL 1.1 (Erlang Public License)

5. THE GREAT DIVIDE: COPYLEFT E NON COPYLEFT



Source:
<https://resources.whitesourcesoftware.com/blog-whitesource/top-open-source-licenses-trends-and-predictions>

5. THE GREAT DIVIDE: COPYLEFT E NON COPYLEFT

If you are in doubt whether

- ✓ a FOSS license includes copyleft obligations
- ✓ you fall under the definition of 'derivative'



Check with your trusted legal advisor
BE WARNED THAT YOU MAY NOT RECEIVE A
BLACK/WHITE ANSWER

5. THE GREAT DIVIDE: COPYLEFT E NON COPYLEFT

The copyleft / non copyleft issue is material when the larger work and/or derivative *IS DISTRIBUTED*

In general – internal use does not raise an issue

5. THE GREAT DIVIDE: COPYLEFT E NON COPYLEFT

Another business model:
Software as a Service (SaaS)



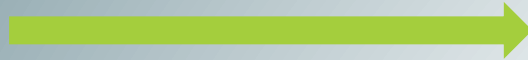
GNU Affero General Public License
2007

The GNU General Public License permits making a modified version and letting the public access it on a server without ever releasing its source code to the public.

The GNU Affero General Public License is designed specifically to ensure that, in such cases, the modified source code becomes available to the community. It requires the operator of a network server to provide the source code of the modified version running there to the users of that server. Therefore, public use of a modified version, on a publicly accessible server, gives the public access to the source code of the modified version.

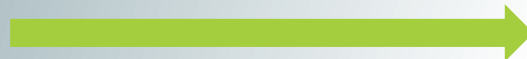
6. LICENSE COMPATIBILITY

BETWEEN NON-
COPYLEFT
LICENSES



COMPATIBLE

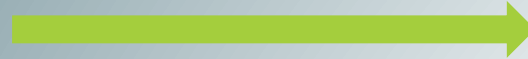
BETWEEN
COPYLEFT AND
NON-COPYLEFT
LICENSES



USUALLY COMPATIBLE

6. LICENSE COMPATIBILITY

BETWEEN
COPYLEFT
LICENSES



ONLY IF AN EXCEPTION IS
PROVIDED IN THE FOSS
LICENSE ('COMPATIBILITY
CLAUSE')

COMPATIBILITY WITH THE GNU GPL

The Licensee can include a code that is subject to the provisions of one of the versions of the GNU GPL in the Modified or unmodified Software, and distribute that entire code under the terms of the same version of the GNU GPL.

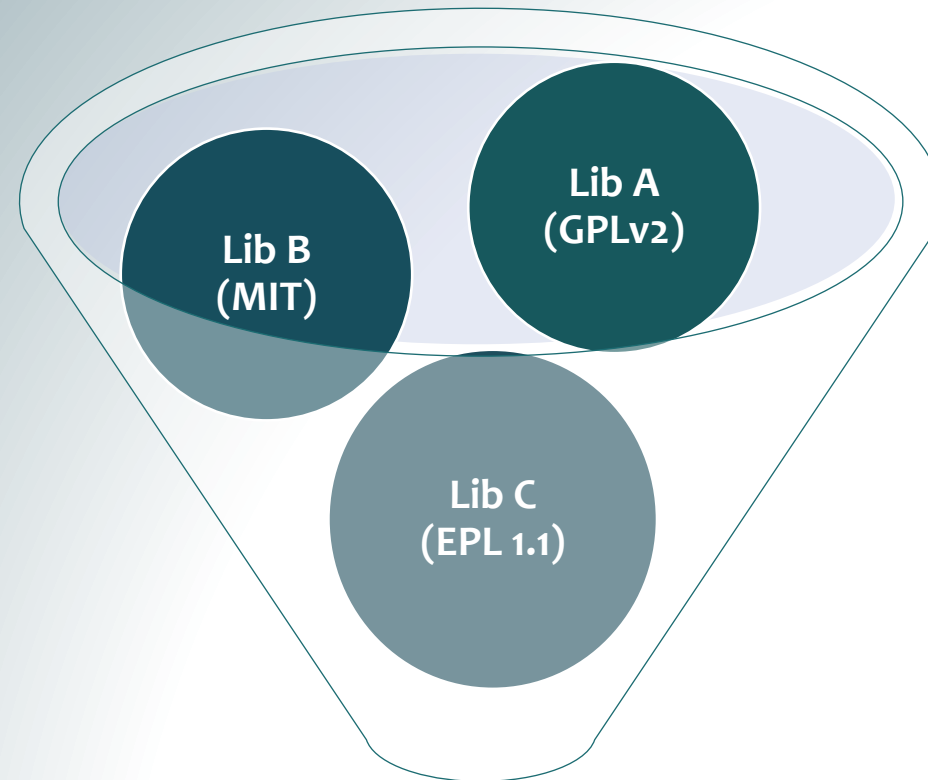
The Licensee can include the Modified or unmodified Software in a code that is subject to the provisions of one of the versions of the GNU GPL, and distribute that entire code under the terms of the same version of the GNU GPL.

6.

LICENSE COMPATIBILITY

NOT
COMPATIBLE

Choosing one of the copyleft
FOSS licenses implies
breaching the other

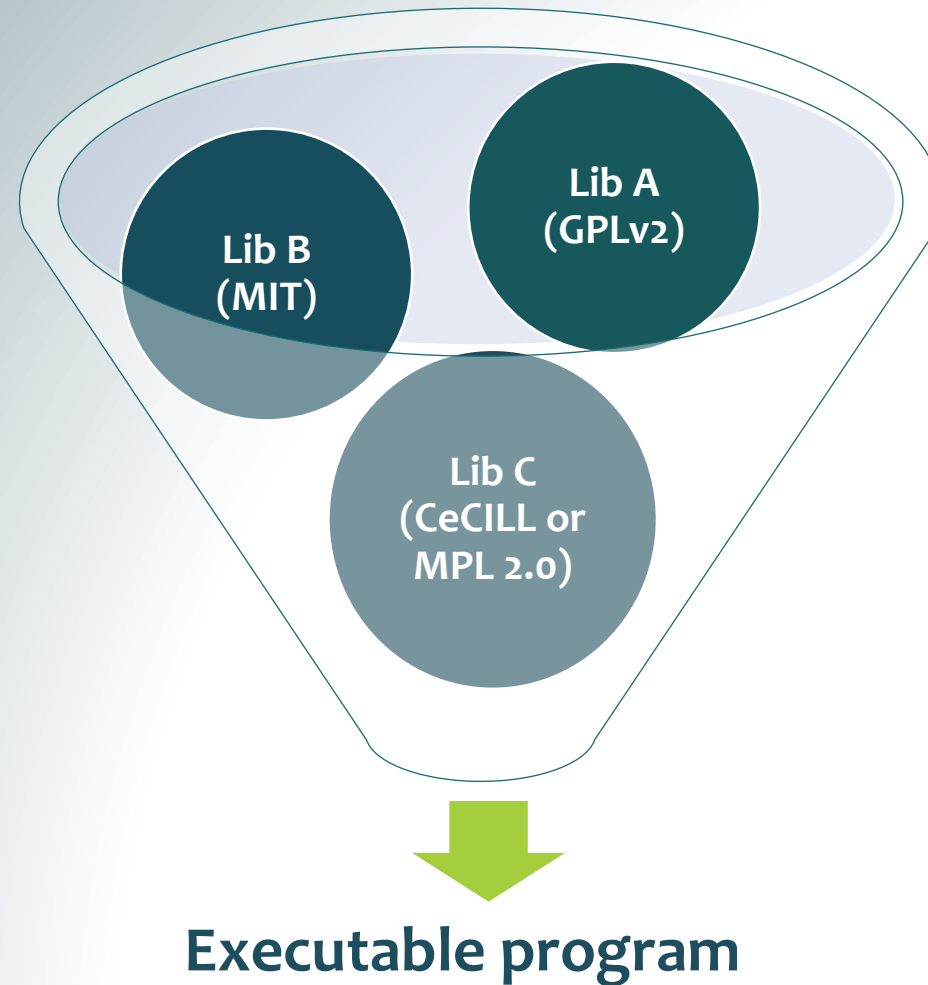


Executable program

6.

LICENSE COMPATIBILITY

COMPATIBLE
thanks to the
compatibility
clause



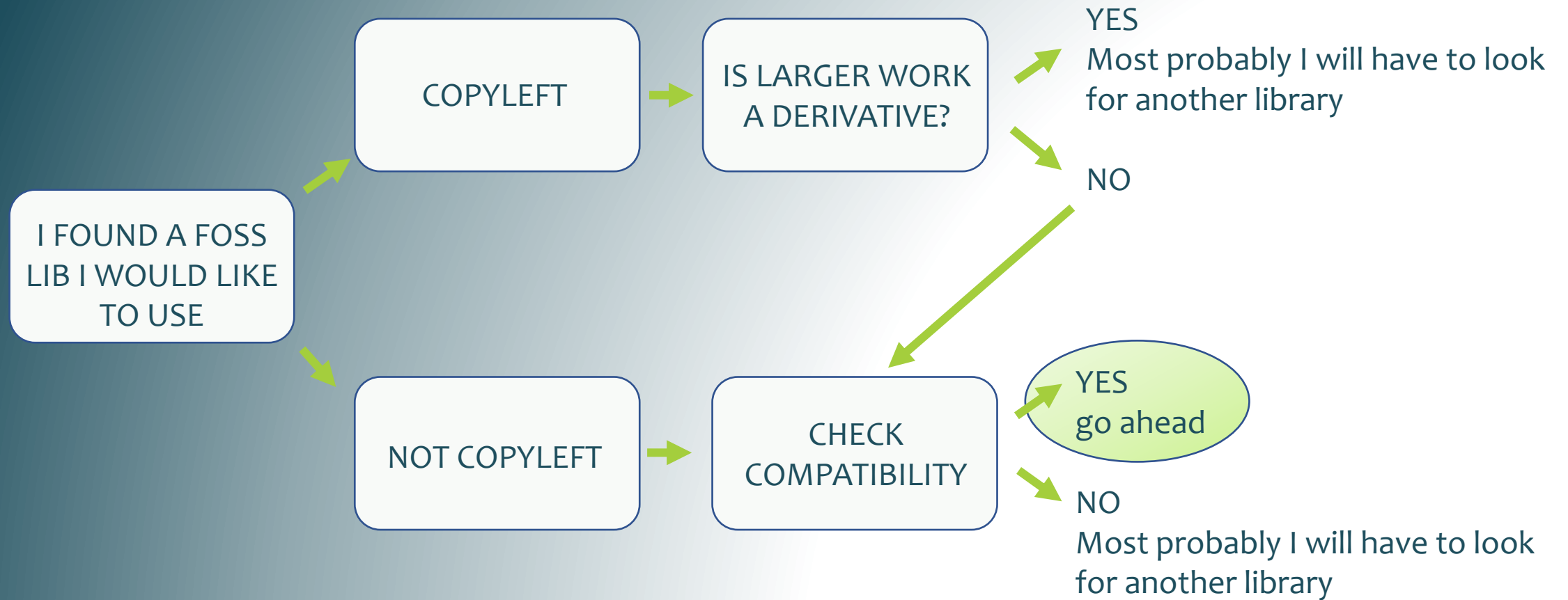
6. LICENSE COMPATIBILITY

If you are in doubt whether the licenses of the components are compatible



Check with your trusted legal advisor

6. LICENSE COMPATIBILITY



? QUESTION TIME ?

7. COMMON OBLIGATIONS UNDER FOSS LICENSES

I FOUND THAT IT IS OK TO INCLUDE FOSS
COMPONENTS IN MY PROJECT – WHAT DO I HAVE
TO DO NOW?

7. COMMON OBLIGATIONS UNDER FOSS LICENSES

These obligations are applicable
when distributing the covered software

- ✓ Include a copy of the FOSS License
 - ✓ Include the copyright notice
 - ✓ Disclose Source Code
 - ✓ State changes
 - ✓ Give credit

7. COMMON OBLIGATIONS UNDER FOSS LICENSES

Some licenses provide a specific notice to be included when distributing (e.g. ErlPL)

EXHIBIT A.

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7. COMMON OBLIGATIONS UNDER FOSS LICENSES




7. COMMON OBLIGATIONS UNDER FOSS LICENSES

Common clause for an
outsourcing agreement

(Open Source Software). The Deliverables shall not include any Open Source Software, which could to any extent limit Company's right to license the Deliverables under any license of its choice and/or any other rights granted to Company under this Agreement. Consultant shall provide to Company a list of all Open Source Software delivered as part of the Deliverables.

7. COMMON OBLIGATIONS UNDER FOSS LICENSES

UNDERTAKINGS UNDER COMMERCIAL AGREEMENTS WITH PARTNERS

- 
- ✓ Undertaking to provide a correct and updated list of all FOSS which is necessary to operate our software
 - ✓ Warranty that any such FOSS does not impair the partner's rights to operate the software and exercise any other rights we may have granted under the applicable commercial agreement

IN CASE OF BREACH

- ✓ Obligation to substitute any FOSS without additional costs and without impact on functionalities
- ✓ Obligation to indemnify the partner for any incurred damages, including (i) delays; (ii) other costs and expenses; (iii) third parties' claims.

7. COMMON OBLIGATIONS UNDER FOSS LICENSES

Procedures and Good Practices

Identify FOSS component
Collection of all necessary information and documentation

Approval of FOSS component
TBD simple procedures to approve use of FOSS component

Update of documentation and other consequent actions
Third parties licenses document to be updated.

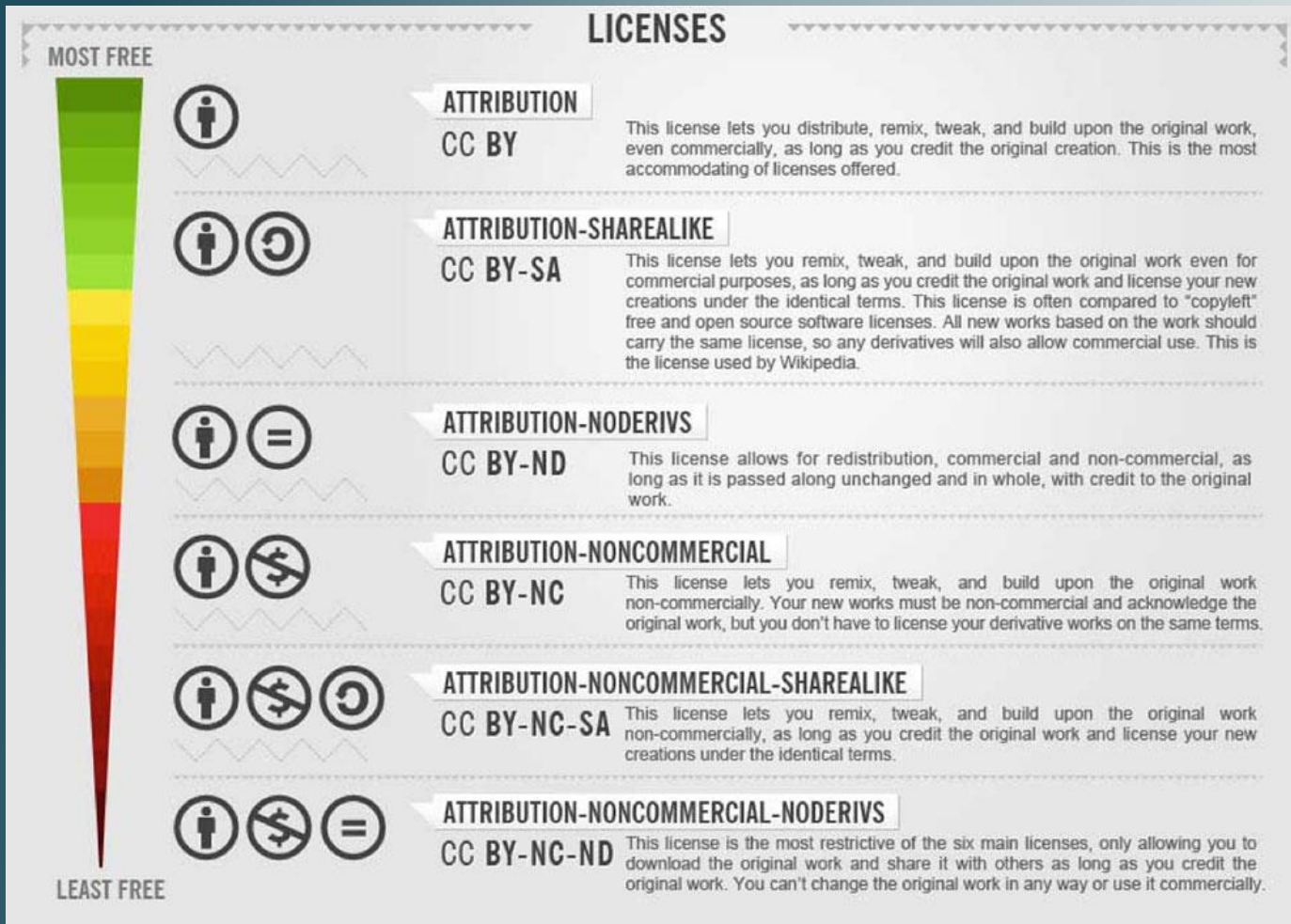
Implementation of any other action as necessary under the applicable FOSS license and/or our commercial agreements.

FOSS
compliance



NO troubles
(likely)

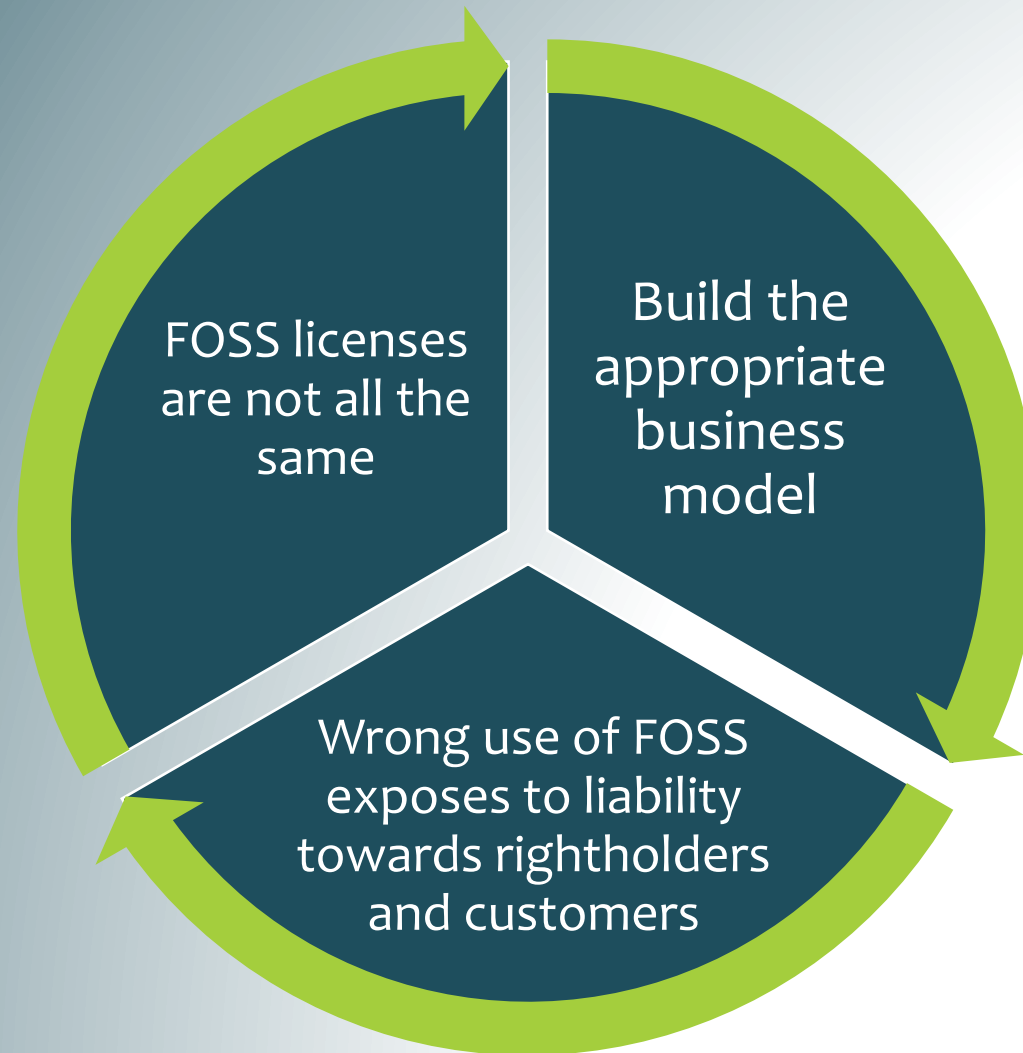
8. NOT ONLY SOFTWARE



- ✓ Hardware: es. CERN open hardware license
- ✓ Design: es. nel caso di stampanti 3D
- ✓ Documenti: Open Content e Creative Commons (2001)

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9. TODAY'S TAKE AWAY



9. TODAY'S TAKE AWAY

Useful links

<https://opensource.org/>

<https://www.fsf.org/>

<http://www.ifross.org/>

<https://creativecommons.org/>

<https://tldrlegal.com/>

? QUESTION TIME ?

THANK YOU FOR YOUR ATTENTION



Avv. Cosetta Masi
cosetta.masi@L2Bpartners.com
<https://l2bpartners.com/>