

Open Source Licenses Standing on the shoulders of giants

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Research Relations Director
Eclipse Foundation
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https://en.wikipedia.org/wiki/Standing_on_the_shoulders_of_giants

Before we
start:

**I'm not a
Lawyer**

- This information is **for educational and debate** purposes only
- This information is **not legal advice** as I am not a lawyer
- Even if I were a lawyer, and able to give professional legal advice, **I am still not YOUR lawyer**
- This information is in **no way to be considered advice from my Employer**, even when I refer to my Community's license (EPL)
- This information is an **anthology of experiences** from one developer to another

Open Source is eating the world





80-90%

Open source makes up 80-90% of applications



200M+

GitHub hosts over 200M repositories



73M+

GitHub users

Sources: Forrester, GitHub



81%

**% companies consuming
open source in products or
services**



44%

**% firms contributing to
upstream open source
projects**



100%

**% productivity improvement seen
by firms contributing to open
source**

Sources: TODO Group, Harvard Business School



Few definitions

Introduction to Software Licensing

- (Free Open Source) Software is protected by Copyright © law
 - Just like music, poetry and books
- All software written after 1978 is automatically protected by very restrictive and protective (for the author) rights
- THEREFORE, a Free Open Source software license is actually a **grant of rights** to the end user **otherwise not granted by law**

Copyrights vs Patents

- Copyrights protect a **specific expression** of an idea
- Patents protect an **idea itself**
- How evil could this be:
 - As a Copyright holder you grant people the **right to copy** and create **derivative works** of your code
 - But do **NOT** give them the rights to your Patent for **the idea the code represents!**

Who owns the Copyright ©

- Most programmers **do not own the right to any code they write**, their Employer does!
- Most Employment Contracts contain something like the following:

*You hereby agree to **assign to the Corporation all right, title and interest** in and to any and all Inventions whether or not patentable or registrable under copyright or similar statutes, made or conceived or reduced to practice or learned by you, either alone or jointly with others, during your employment, which (a) relate to methods, apparatus, designs, products, processes or devices sold, leased, used or under construction or development by the Corporation, or otherwise relate to or pertain to the actual or anticipated business, functions, operations, research or development of the Corporation, (b) utilize any physical or intellectual property owned by the Corporation, or (c) are based on any information or knowledge gained by you through your employment with the Corporation.*

This is a really big issue for Open Source projects...

Derivative Works

- “...**a work based on one or more preexisting works**, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or **any other form in which a work may be recast, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications**, which, as a whole, represents an original work of authorship, is a ‘derivative work’”
 - Section 101 of U.S. Copyright Act

- **Derivative works are not considered original creations**
- **They are considered *copies* of the original and you therefore need permission to display, distribute, etc, the derivative work**

Trademarks™

- Identifies the origin of product or service
- Distinctive symbols, pictures, or words
- Registration® is not required, but helps (similar to copyright – expands your ability to sue, and more)
- For example, it is never proper to write “Java”. You really should always denote it as Java™ (Java™ is a trademark of Oracle®)
- Companies sometimes look evil defending their Trademarks, but this is not necessarily because they are evil...
 - If you establish something as a Trademark, you are compelled by law to defend any perceived infringement on the trademark or you seriously jeopardize your rights
 - For example, when Starbucks sued “Sambucks”, they were not necessarily being evil, but acting as compelled by law

Few open source licenses grant any trademarks rights

OSI Definition of an Open Source License

1. **Free Redistribution:** No Fees or Royalties
2. **Source Code:** Included and Redistributable
3. **Derived Works:** Allowed and redistributable under same terms or “better”
4. **Integrity of Authors Source Code:** May require derived works to carry different name or version
5. **No discrimination against person or group of persons:** Can warn of legal constraints such as trade embargos, but not explicitly forbid
6. **No Discrimination Against Fields of Endeavor:** Closes loophole that might restrict commercial use
7. **Distribution of License:** Must be self standing and not require a non-disclosure or other agreement
8. **License Must Not Be Specific to a Product:** Closes another loophole: self-explanatory
9. **License Must Not Restrict Other Software:** In the distribution, so GPL is OK
10. **License Must Be Technology-Neutral:** Cannot restrict use to certain platforms (Windows™ for example)

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Is it an Open Source License?

This is not the case!
Because there is a
restriction of use

*Rule #6: No Discrimination Against
Fields of Endeavor*



The JSON License

Copyright (c) 2002 JSON.org

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The Software shall be used for Good, not Evil.

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<https://www.json.org/license.html>



Open Source License spectrum

96 Open Source Licenses approved by OSI (Jan 2020)



open source
initiative®

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3-clause BSD License (BSD-3-Clause)	GNU General Public License version 3 (GPL-3.0)	OCLC Research Public License 2.0 (OCLC-2.0)
Academic Free License 3.0 (AFL-3.0)	GNU Lesser General Public License version 2.1 (LGPL-2.1)	Open Group Test Suite License (OGTSL)
Adaptive Public License (APL-1.0)	GNU Lesser General Public License version 3 (LGPL-3.0)	Open Software License 1.0 (OSL-1.0) (superseded)
Apache Software License 1.1 (Apache-1.1) (superseded)	Historical Permission Notice and Disclaimer (HPND)	Open Software License 2.1 (OSL-2.1) (superseded)
Apache License 2.0 (Apache-2.0)	IBM Public License 1.0 (IPL-1.0)	Open Software License 3.0 (OSL-3.0)
Apple Public Source License (APSL-2.0)	Intel Open Source License (Intel) (retired)	OSET Public License version 2.1
Artistic license 1.0 (Artistic-1.0) (superseded)	IPA Font License (IPA)	PHP License 3.0 (PHP-3.0)
Artistic License 2.0 (Artistic-2.0)	ISC License (ISC)	The PostgreSQL License (PostgreSQL)
Attribution Assurance License (AAL)	Jabber Open Source License (retired)	Python License (Python-2.0) (overall Python license)
Boost Software License (BSL-1.0)	LaTeX Project Public License 1.3c (LPPL-1.3c)	CNRI Python license (CNRI-Python) (CNRI portion of Python License)
BSD License: See *-clause BSD License	Lawrence Berkeley National Labs BSD Variant License	Q Public License (QPL-1.0)
BSD+Patent (BSD-2-Clause-Patent)	Licence Libre du Québec – Permissive (LiLiQ-P) version 1.1 (LiLiQ-P)	RealNetworks Public Source License V1.0 (RPSL-1.0)
CeCILL License 2.1 (CECILL-2.1)	Licence Libre du Québec – Réciprocité (LiLiQ-R) version 1.1 (LiLiQ-R)	Reciprocal Public License, version 1.1 (RPL-1.1) (superseded)
Common Development and Distribution License 1.0 (CDDL-1.0)	Licence Libre du Québec – Réciprocité forte (LiLiQ-R+) version 1.1	Reciprocal Public License 1.5 (RPL-1.5)
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CUA Office Public License Version 1.0 (CUA-OPL-1.0) (retired)	Microsoft Reciprocal License (MS-RL)	Sleepycat License (Sleepycat)
Eclipse Public License 1.0 (EPL-1.0) (superseded)	MirOS License (MirOS)	Sun Industry Standards Source License (SISSL) (retired)
Eclipse Public License 2.0 (EPL-2.0)	MIT License (MIT)	Sun Public License 1.0 (SPL-1.0)
eCos License version 2.0 (eCos-2.0)	MITRE Collaborative Virtual Workspace License (CVW) (retired)	Sybase Open Watcom Public License 1.0 (Watcom-1.0)
Educational Community License, Version 1.0 (ECL-1.0) (superseded)	Motosoto License (Motosoto)	Universal Permissive License (UPL)
Educational Community License, Version 2.0 (ECL-2.0)	Mozilla Public License 1.0 (MPL-1.0) (superseded)	University of Illinois/NCSA Open Source License (NCSA)
Eiffel Forum License V1.0 (EFL-1.0) (superseded)	Mozilla Public License 1.1 (MPL-1.1) (superseded)	Upstream Compatibility License v1.0
Eiffel Forum License V2.0 (EFL-2.0)	Mozilla Public License 2.0 (MPL-2.0)	Vovida Software License v. 1.0 (VSL-1.0)
Entessa Public License (Entessa)	Multics License (Multics)	W3C License (W3C)
EU DataGrid Software License (EUDatagrid)	NASA Open Source Agreement 1.3 (NASA-1.3)	wxWindows Library License (WXwindows)
European Union Public License 1.2 (EUPL-1.2)	Naumen Public License (Naumen)	X.Net License (Xnet)
Fair License (Fair)	Nethack General Public License (NGPL)	Zero-Clause BSD / Free Public License 1.0.0 (0BSD)
Framework License (Framework-1.0)	Nokia Open Source License (Nokia)	Zope Public License 2.0 (ZPL-2.0)
GNU Affero General Public License version 3 (AGPL-3.0)	Non-Profit Open Software License 3.0 (NPOSL-3.0)	zlib/libpng license (Zlib)

<https://opensource.org/licenses/alphabetical>



Licenses that are “popular and widely-used or with strong communities”

- > Apache License 2.0 (Apache-2.0)
- > 3-clause BSD license (BSD-3-Clause)
- > 2-clause BSD license (BSD-2-Clause)
- > GNU General Public License (GPL)
- > GNU Lesser General Public License (LGPL)
- > MIT license (MIT)
- > Mozilla Public License 2.0 (MPL-2.0)
- > Common Development and Distribution License 1.0 (CDDL-1.0)
- > Eclipse Public License 2.0 (EPL-2.0)

vs Licenses proposed by GitHub

- > **Apache License 2.0**
- > **GNU General Public License v3.0**
- > **MIT License**
- > **BSD 2-Clause “Simplified” License**
- > **BSD 3-Clause “New” or “revised” License**
- > Boost Software License 1.0
- > Creative Commons Zero v1.0 Universal
- > **Eclipse Public License 2.0**
- > GNU Affero General Public License v3.0
- > **GNU General Public License v2.0**
- > **GNU Lesser General Public License v2.1**
- > **Mozilla Public License 2.0**
- > The Unlicense

Why do we need to care about licenses?

Issues that could arise if individuals and businesses are **not careful about open source licensing**:

- > Having to **exchange a library at a late stage** in your project development because you find out it's license is not compatible.
- > Having to make commercially developed **software free and open source**.
- > **Being sued** or having to settle a legal dispute.

The \$100 Million Court Case for Open Source License Compliance

AYALA GOLDSTEIN, JUNE 1, 2020

#License Compliance

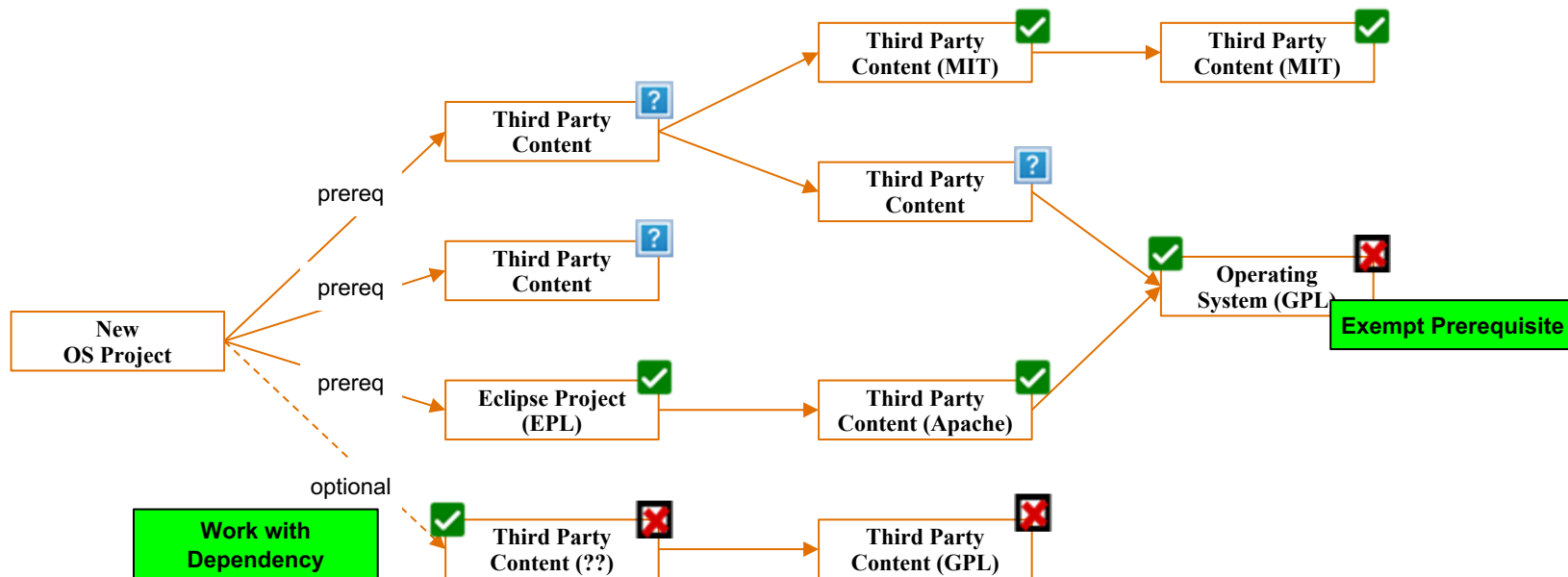


CoKinetic Systems Corporation, one of the major global players in the in-flight entertainment (IFE) market, has recently filed suit against Panasonic Avionics Corporation in a New York federal court, seeking damages of over \$100 million.

CoKinetic claim that Panasonic, which holds a roughly 70% share of the embedded IFE hardware market, has willfully violated GPL v2 open source licensing requirements, in addition to a long list of other unlawful actions aimed at monopolizing the market for in-flight entertainment software and media services.

<https://resources.whitesourcesoftware.com/blog-whitesource/the-100-million-case-for-open-source-license-compliance>

Third-party dependencies compatibility



The License Spectrum



A **software license** is a legal instrument governing the use or redistribution of software.

A typical software license grants the licensee, typically an end-user, permission to use one or more copies of software in ways where such a use would otherwise potentially constitute copyright infringement of the software owner's exclusive rights under copyright.

The License Spectrum: Commercial Software



Commercial Software often imposes **extra restrictions** on users that are not covered by Intellectual Property law

- > Agreement **not to disassemble** or **reverse engineer**
- > Agreement to **use on only** one computer
- > Agreement **not to transfer or resell** your license to another entity
- > Agreement **not to rent or lease the computer** with the software
- > ...

The License Spectrum: Non-Commercial Software



A **non-commercial license** is a license that does not provide for a commercial activity: an activity that does not have a commercial purpose.



- AFPL - Aladdin Free Public License
- JRL - Java Research License

The License Spectrum: Strong Copyleft Licenses



Strong Copyleft Licenses

- > “Copyleft is the practice of granting the right to freely distribute and modify intellectual property with the requirement that the **same rights be preserved in derivative works** created from that property.”¹
- > E.g.: Under the GPL 2.1, merely “**linking**” **GPL code** with other code may require that the other code (and the combination) be **licensed under the GPL**.



The License Spectrum: Weak Copyleft Licenses



Weak Copyleft Licenses

- > “This allows other software to link to the library and be redistributed without the requirement for the linking software to also be copyleft-licensed. Only changes to the weak-copyleft-licensed software itself become subject to copyleft provisions of such a license.”
- > Allows for commercial re-licensing
- > Ensures that improvements to the original code stays under the same license



The License Spectrum: Permissive licenses



Permissive licenses

- > “Permissive” or “Non-Copyleft” Free software comes from the author with permission to **redistribute** and **modify**, and **add additional restrictions** to the license terms.
- > A subsequent party can **modify** the non-copyleft free program and **distribute** the modified program **as a proprietary software product, without** making the source code available to others on **the same terms**.
- > Do whatever you want with the code
- > Acknowledge the author/contributor



BSD



The License Spectrum: Public Domain

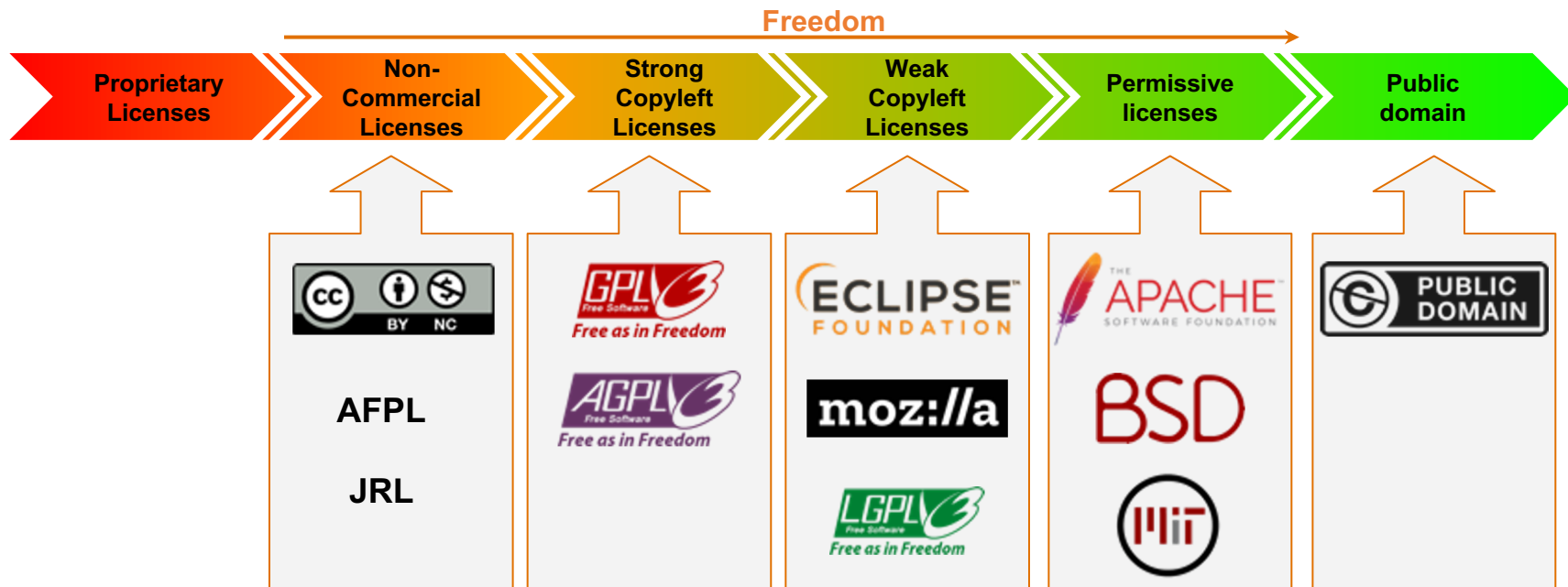


The **public domain** consists of all the creative work to which no exclusive intellectual property rights apply.

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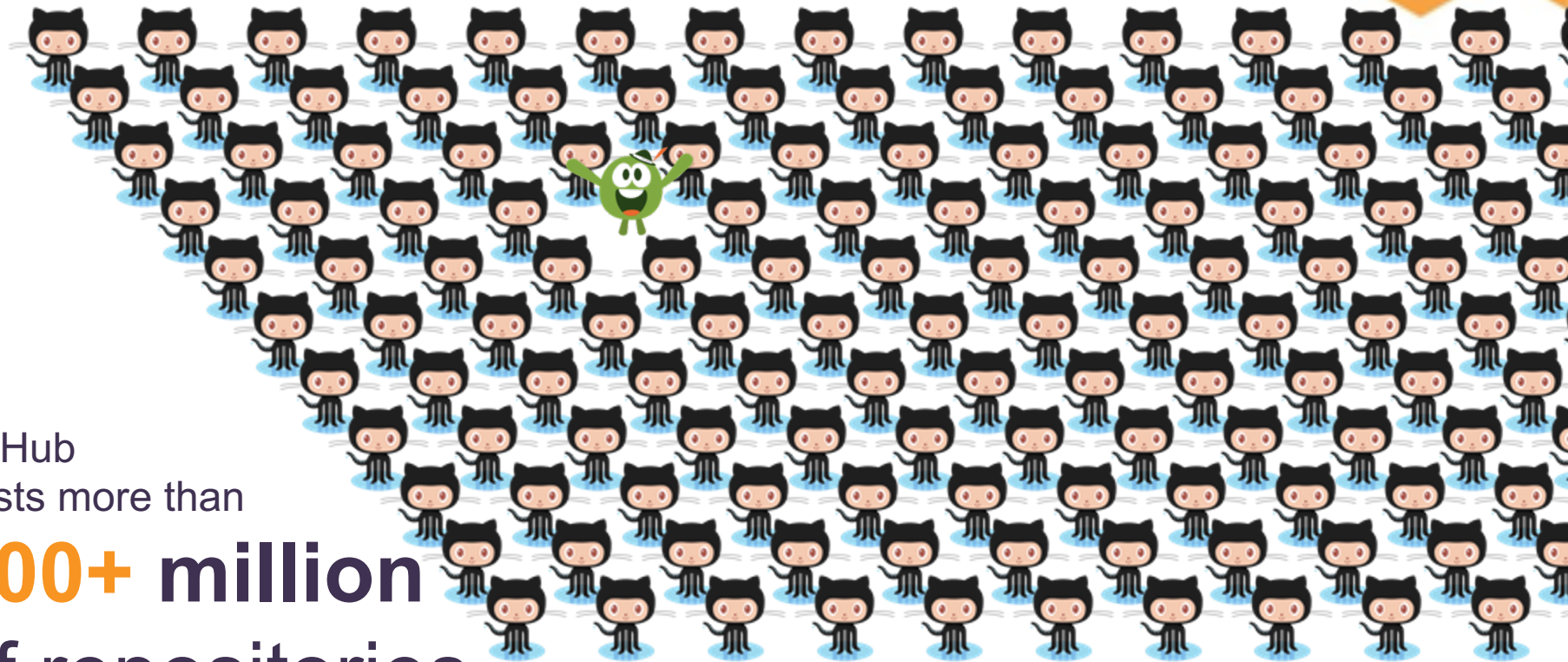
The License Spectrum





Open Source Foundations

GitHub is not a silver bullet



GitHub
hosts more than
200+ million
of repositories

Open Source Best Practices



Transparency



Openness



Meritocracy

Thanks to Open-Source Foundations!



Open Collaboration through Open Source

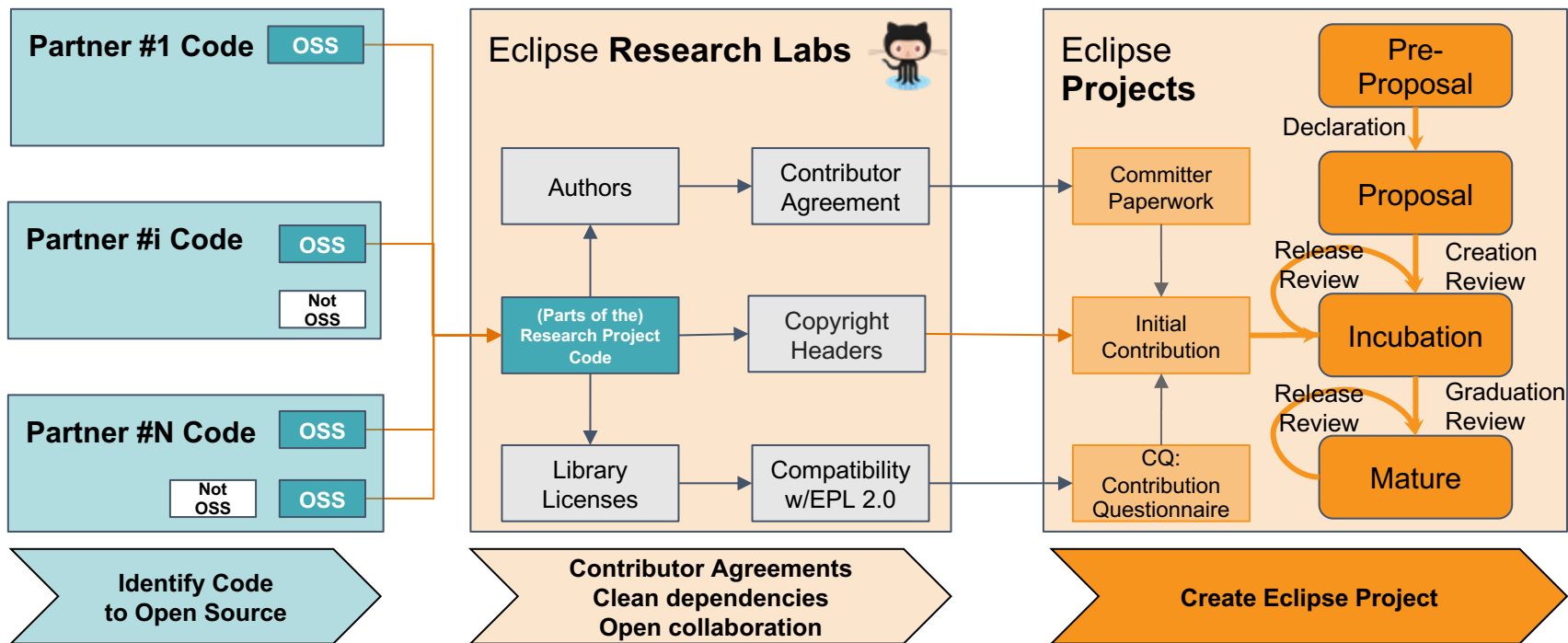


	GitHub	Single-Vendor Open Source	Open Source Foundation
Thriving developer community	✓	✓	✓
High quality code that solves complex problems	✓	✓	✓
Ecosystem development and marketing services to drive adoption and monetization		✓	✓
Predictable processes and guidance to deliver large-scale innovation on a regular cadence			✓
Vendor-neutral governance model to support industry-wide collaboration			✓
Business-friendly IP and licensing services to enable commercialization			✓

Advantages of the Eclipse Public License

- > EPL 2.0 is **business-friendly**
 - Allows any kind of exploitation built around the Open Source project ⇒ Proprietary extensions
 - Powerful for technology transfer
- > EPL 2.0 is **encouraging contributions**
 - Developers must redistribute EPL-ed modified code
- > EPL 2.0 is **widely used and globally recognized**
 - **Part of top 9 most popular** open source licenses
(see <https://opensource.org/licenses>)

Research Development Process with Eclipse



IP & License Management at Eclipse Foundation

Approved Licenses

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- > Apache Software License 1.0, 1.1, 2.0
- > Boost Software License
- > BSD 2-Clause “Simplified” License
- > BSD 3-Clause “New” or “Revised” License
- > BSD 4-Clause “Original” or “Old” License
- > Creative Commons Attribution License 2.5
- > Creative Commons Attribution 3.0 Unported
- > Creative Commons Attribution 4.0 International
- > Creative Commons Attribution Share Alike 3.0 Unported
- > Creative Commons Zero V1.0 Universal
- > Common Development and Distribution License (CDDL) Version 1.0, 1.1
- > Common Public License Version 1.0
- > FreeType License
- > GNU Free Documentation License Version 1.3
- > IBM Public License 1.0
- > ISC License
- > MIT License
- > Mozilla Public License Version 1.1, 2.0
- > NTP License
- > OpenSSL License
- > PHP License v3.01
- > PostgreSQL License
- 1. SIL Open Font License 1.1

- > Unicode Terms of Use
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- > Unicode License Agreement – Data Files and Software (2016)
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- > W3C Software and Notice License (2002-12-31)
- > W3C Software Notice and License (1998-07-20)
- > W3C Software Notice and Document License (2015-05-13)
- > X11 License
- > Zlib License
- > Zope Public License 2.1

Non Approved Licenses

- > **GNU General Public License (GPL)**
- > Sun Binary Code License Agreement

Please note the **LGPL** has been approved by the Eclipse Board of Directors in certain cases. Please contact license@eclipse.org for more information.

<https://www.eclipse.org/legal/licenses.php>



Thank you

Philippe Krief

philippe.krief@eclipse-foundation.org



Credits

- Mike Milinkovich
- Janet Campbell
- Gael Blondelle
- Ralph Mueller
- Philippe Krief
- Marco Jahn
- And more...



Characteristics of Open Source Licenses

TL;TR
Only if we have time

Key Characteristics of Software License

- Definitions
- Grant of Copyright License Rights
- Warranty and Liability
- Jurisdiction and Duration

**Fairly standard legal
mumbo jumbo**

- Sublicensing
- Reciprocity
- Patent Rights
- Patent Retaliation
- Use of Trademarks

**Differentiating
Factors**

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Fairly standard legal mumbo jumbo

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Differentiating Factors

Definitions

- Defines important terms used within the license
- May seem trivial, but the definitions are often “telling” of what is important in the license
- May define terms that are used in applicable laws
 - Many licenses clarify the term “Derivative Works”, which is defined in law, but expanded for clarification specific to software
- May define terms that are interesting to the license
 - Community based licenses like Apache and Eclipse define “Contribution” and “Contributor”

Grant of Copyright Rights

- Sometimes called “Grant of Copyright License” or “Grant of Rights”
- Grants you rights you do not have under Copyright law such as the right to copy, create derivative works, to redistribute, etc.
- There may be conditions, such as “Reciprocity” (more later)
- This is often short and sweet

From Apache 2.0 license:

Grant of Copyright License: Subject to the terms and conditions of this License, each Contributor hereby grants to You a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable copyright license to reproduce, prepare Derivative Works of, publicly display, publicly perform, sublicense, and distribute the Work and such Derivative Works in Source or Object form.

Warranty and Liability

- YOU MAY NOTICE SECTIONS OF LICENSES THAT SEEM LIKE THEY ARE YELLING
- THEY BASICALLY SAY, “HEY THERE, YOU DIDN’T PAY FOR THIS SO THERE IS NO WARRANTY, AND YOU CAN’T SUE US IF IT BREAKS, OK? AND ALSO WE ARE NOT LIABLE FOR ANYTHING BAD THAT HAPPENS, EVEN IF WE INTENTIONALLY DID SOMETHING WRONG TO THE EXTENT AFFORDED BY LAW.”
- NOTE – THE YELLING IS NOT BEING RUDE, OR LAWYERS BEING LAWYERS – IT’S ACTUALLY A COURT PRECEDENT THAT IT BE ALL IN UPPER CASE

Confirmed in: UCC 2-316; UCC 1-201(10); Amendments to rules of court, Virginia Supreme court Nov 1, 2002

Jurisdiction and Duration

- Some licenses specify a legal jurisdiction and terms
- Generally a simple way to further minimize any possible legal risks
 - Location
 - Timeline
 - Type of trial
- For example, the EPL 1.0 used to state:

“This Agreement is governed by the **laws of the State of New York** and the intellectual property laws of the **United States of America**. No party to this Agreement will bring a legal action under this Agreement more than **one year after the cause of action arose**. Each party waives its rights to a jury trial in any resulting litigation.”

- **It has been removed in the EPL 2.0**

Key Characteristics of Software License

- Definitions
- Grant of Copyright License Rights
- Warranty and Liability
- Jurisdiction and Duration

**Fairly standard legal
mumbo jumbo**

- Sublicensing
- Reciprocity
- Patent Rights
- Patent Retaliation
- Use of Trademarks

**Differentiating
Factors**

Grant of Sublicense Rights

- **Sublicense** – Licensee has right to license to 3rd party with same terms
- **Relicense** – Ability to distribute under different license
- Examples
 - Apache and Eclipse allow sublicense
 - Apache allows full relicense of your changes
 - Essentially you own the copyright of derivative works
 - Eclipse allows relicense of object code with disclaimers
 - Each distribution of GPL code is technically a license from the Author, so technically not sublicensed

Reciprocity

- The exchange of comparable concessions
- No, File, Module, Derivative Works, Hosting, Container
- “Reciprocity Reach” – The extent to which your derivative works must be licensed under the same terms and conditions
 - Apache 2.0 – No Reciprocity
 - EPL 2.0 – No Reciprocity on modules that are not derivative works
 - GPL 2.0 – Reciprocity on derivative works and “collective works”
 - “Collective works” not explicitly defined, software “based on the Program”

Patent Rights and Retaliation

- Many licenses explicitly grant you rights to any patents the Copyright holders may have with respect to the code (Apache, EPL)
- Some licenses have implicit patent grants (GPL)
- Many licenses terminate the patent grants if you sue for patent infringement on any of the licensed code
 - EPL and Apache Patent rights explicitly terminate upon suing any entity related to the licensed code
 - GPL Patent rights implicitly terminate upon restricting royalty-free distribution of any GPL code

Use of Trademarks™

- Some licenses (Apache) explicitly clarify that the license does not permit the use of the trademark except as to document the origin of the source code as per the license requirements
- The PHP License explicitly defines how products that use PHP cannot be named
- Some licenses (EPL) do not mention trademarks in the license and therefore default Trademark law applies
 - This is intentional to allow Trademark flexibility outside of the scope of the use of the license

Comparing Three Popular OS Licenses

More at https://en.wikipedia.org/wiki/Comparison_of_free_and_open-source_software_licenses

	GPL v2	EPL v1	Apache v2
Reciprocity	Derivative works and anything that cannot be “reasonably considered an independent and separate work”	Derivative Works	None
Sublicense	None, license is virtually granted from author on each distribution	Re-license of Object code permitted	“may provide additional or different license terms and conditions of Your modifications”
Patent Rights	Implicit	Explicit	Explicit
Patent Retaliation	Rights terminate if you prevent royalty free distribution of the code	Rights terminate if you file suit against any entity for the code	
Trademark	Not covered	Not covered	Explicitly disallowed



A brief presentation...

of the Eclipse Foundation

A short history of the Eclipse Foundation

- > **2001:** IBM publishes the Eclipse IDE
- > **2004:** Stakeholders want a vendor neutral governance ⇒ creation of the Eclipse Foundation Inc
- > **2010:** Lifting technology and language restrictions invites new participants
- > **2012:** Create working groups to organize collaboration
- > **2012:** Creation of the Eclipse IoT Working Group
- > **2013:** Eclipse Foundation Europe GmbH established to provide services to European ecosystem
- > **2015:** EU Research activities ramp up ⇒ we have participated in 14 research projects since then
- > **2020:** Eclipse Foundation announces its move to Europe: creation of Eclipse Foundation AISBL
- > **2020:** OSGi move to the Eclipse Foundation
- > **01/2022:** Eclipse Foundation AISBL is fully established



The Community for Open Innovation and Collaboration

The Eclipse Foundation provides our global community of individuals and organizations with a mature, scalable, and business-friendly environment for open source software collaboration and innovation.

The Open Source Foundation of Choice in Europe With a global presence, reach and reputation

Eclipse Foundation AISBL is based in Brussels
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Europe's largest open source organization

170+

Organization
Members
In Europe

900+

European
Committers

7+

Years in
Operation
in Europe

10+

European
Staff

With a global reach and reputation

330+

Organization
Members

1600+

Committers

400+

Projects

40+

Professional
Staff

Europe



USA



Asia



Eclipse Foundation Strategic Members

The Eclipse ecosystem and how to reach it



250.000

Newsletter Subscribers



50

(Co)organised Events



20+

Eclipse Working Groups



2.5M

Unique visitors per month



White Papers



Press Releases



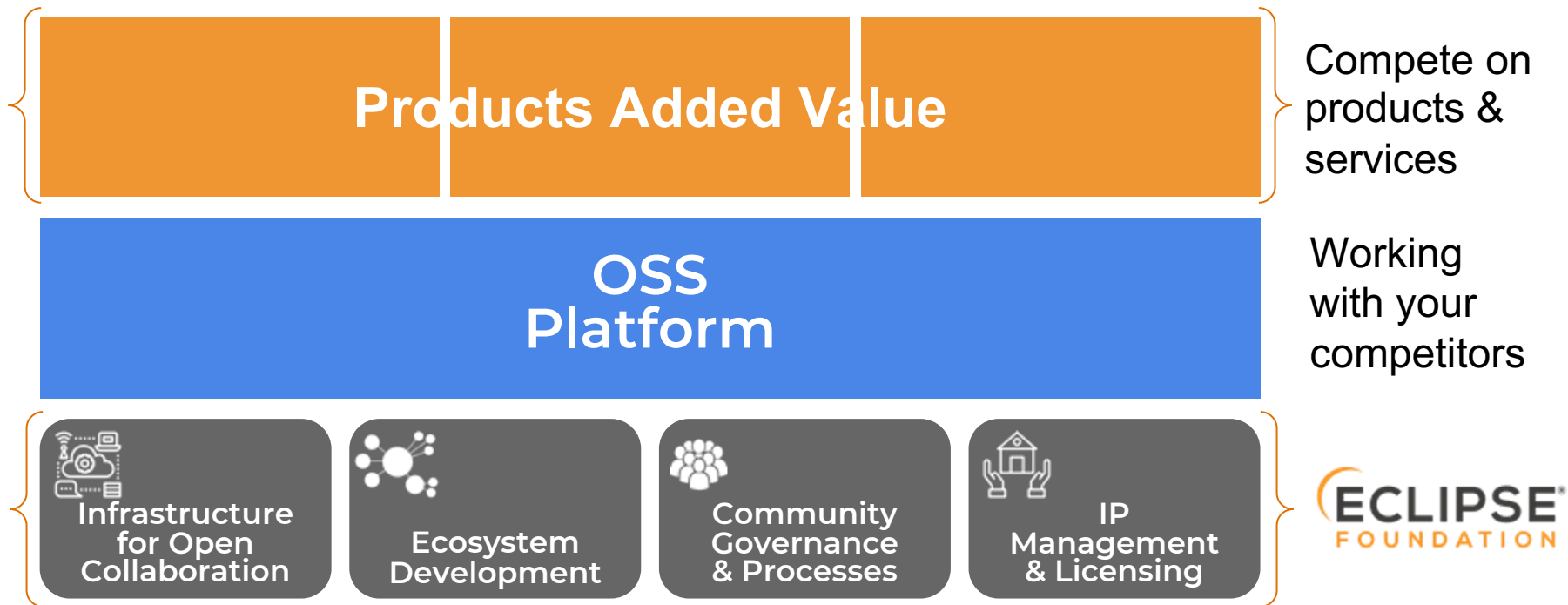
EclipseCon



1.5M

Downloads per month

Open Collaboration: a business-friendly ecosystem



Interact with 20+ Working Groups

Java



IoT



HW & SW on RISC-V



Automotive



Cloud





Thank you

Philippe Krief

philippe.krief@eclipse-foundation.org

