

Software Licensing & Business Models

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EUROPEAN PATENT ATTORNEYS - COMMUNITY TRADE MARK ATTORNEYS

Intellectual Property in Software

➤ Copyright

- Protects code (including source and object) as a literary work
- Exists automatically from date of creation
- Does not protect technical concepts behind the code
- Infringement occurs only when copying takes place



Intellectual Property in Software

- Patent
 - Protects technical concepts, not restricted to specific code or copying
 - Must be novel and inventive
 - In Europe, invention must make a technical contribution to the art
 - In USA, anything goes as long as it is tangibly embodied



Licensing

- Negotiated License (bespoke)
- End User License (e.g. shrink wrap/click wrap)
- Free Licence (e.g. GPL)
- Permissive Free License (e.g. BSD)



Free Software License

- Grants rights to modify and distribute software that would otherwise constitute copyright, and possibly patent, infringement
- “Free” does not mean no cost and no restrictions (not to be confused with “public domain”)
- “Copyleft” is usually a key feature
- Many different “off-the-shelf” versions (e.g. GPL), not necessarily having the same terms & conditions
- Some FSF or OSI approved



Permissive Free License

- Similar to Free Software License
- Key difference compared to Free License is that “Copyleft” is usually not a feature



GPLv3

- GNU General Public License, FSF approved
- Key features include:
 - Copyleft
 - Protection against patent threats
 - Tivoisation
 - Protection against Digital Rights Management



GPLv3 – Comments

- You are not required to distribute your modified code, but if you do, it must be under terms no more restrictive than the GPL, and you must provide, or offer to provide, the source code (Copyleft)
- If your software links with or incorporates GPL code, then similar conditions apply
- If your software does not combine with GPL code in such a way that they are effectively one program, then your software need not be released under the terms of GPL



GPLv3 – Comments

- You are free to charge for GPL-covered works, but you cannot stipulate that subsequent distribution is subject to a fee
- You can retain ownership of your own code
- Rights granted under GPL cannot be withdrawn



GPLv3 – Comments

- GPL is not necessarily compatible with other free software licenses
- No indemnification from litigation arising from infringement of third party rights, e.g. third party patent rights or copyright



The Patent Problem

- There is a high probability that any significant software products or business web sites infringe one or more third party patents, irrespective of whether the software is free software or open source
- Taking a free software license does not necessarily indemnify you against this
- Open source software can make the patent owner's task of proving infringement easier



Possible Business Models

➤ Dual Licensing

- Offer option of either free software license or commercial license
- Free license – you may benefit from user contribution, or establishing a dedicated user community
- Commercial License – you can offer e.g. additional features, better service; your customers are not bound by terms of a typical free license
- Only suitable for entities that wholly own the relevant rights
- MySQL, Trolltech



Possible Business Models

- “Arm’s Length” Commercial Product
 - Open source framework or library installed on user’s computer separately from a commercial product
 - Vendor charges for commercial product, which can be closed source
 - Commercial product may use the open source component as long as it does not effectively become part of it (depends on terms of open source license)



Possible Business Models

➤ Service Model #1

- Vendor charges for use of software without actually distributing software, e.g. a vendor hosted web application
- The hosted application could therefore be based on open source code, but the vendor is not obliged to make its modifications open source since it is not distributing its application (depends on terms of open source license)

➤ Service Model #2

- Charge only for support, training and consulting services that assist users of the open software.



Possible Business Models

- You can simply charge for the software itself
- Depending on the terms of the license, you may also be able to charge for, and restrict distribution and use of, your own product even if it is based on open source code (not applicable to GPLv3)

