

# **Legal risks relating to Use of Open Source as part of Commercial Products and Services**

**Verso Open Source Business Programme  
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## Topics

- 1) Internal use vs. distribution of Open Source Software (OSS) as part of product or service
- 2) Legal risks relating to use of OSS
- 3) Risk mitigation
- 4) How to comply with license terms?
- 5) Suppliers and OSS
- 6) Any court cases?



## Use of Open Source in Products and Services

- Has increased during past years
- Brings many advantages
  - High quality and maturity components
  - At relatively low acquisition costs
- However, legal risks must be taken into account!
- Risks are higher when using OSS in commercial products or services compared to internal use
  - Reason: Distribution of OSS triggers key obligations under OSS license terms



## Internal use vs. use in Products and Services?

- Solely internal use of OSS is relatively safe
  - E.g. as part of internal tool
  - However, provided no code from the tool ends up to final product
- Internal means there is no distribution involved
  - Use of OSS as part of website service does not involve distribution provided user does not get binary copy of the program
  - Note that giving the program to subcontractors may not be considered as internal use
    - when OSS is used installed in subcontractor's own devices and used at subcontractor's own premises
- If binary version of the OSS program is distributed to a customer, contractor or otherwise made available, risks may materialize...

## What are the Legal Risks involved?

Risks relating to:

- IPR infringement
  - Copyright and patent infringements
  - Infringement of either licensor(s)' or third party rights
- Compliance with OSS license terms
  - Obligations under OSS licenses
  - Incompatibilities between different OSS licenses
  - Some OSS licenses may deny commercial use
- Dilution of own patents
- Contamination of proprietary code
- Lack of warranties and indemnification

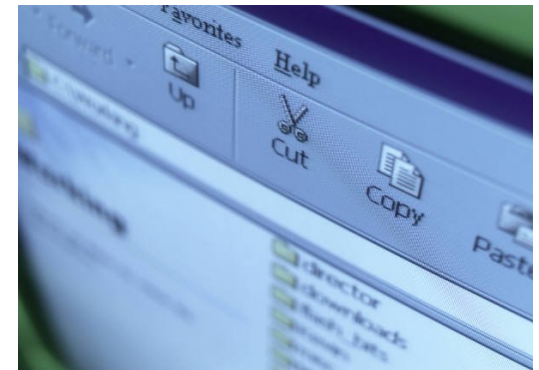
## Risk mitigation

First, be aware:

- **What** OSS components you are using?
- Under **which** OSS license **terms** the components are?
- **How** you are using the components?
  - Software architecture
- Do checks for **third party** rights!

## Copyrights and Patents

- Do not infringe copyrights and patents!
  - Check licensors' and third party rights
- However, right holders may be hard to identify:
  - There may be several right holders to one single OSS component
  - OSS component may include files without copyright notices (as well as notices without proper licenses)
  - Are there (unknown) patents applicable to the software?



## Different OSS License Categories

- I) Copyleft licenses (GPL + LGPL)
- II) License contracts (e.g. Mozilla)
- III) Permissive license notices (MIT, BSD, Apache 1.1)



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## GPL and LGPL

- Grant rights to redistribute, copy and derivate
- Rights are granted by original author to licensee
- Requirements:
  - Copyright notices and license must be preserved in the code and modifications must be marked
  - “Inheritance” or “viral” effect:
    - Derivative works must be licensed under the same license
    - Source code for the whole derivative work must be provided
    - Mere linkage of GPL´ed or LGPL´ed components with proprietary components may trigger viral effect
  - If distributed in object code, either the source code or an offer to provide the source code must accompany the distribution

## License Contracts: Mozilla License 1.1

- Grants rights to use, reproduce, modify, distribute...
- Also explicit patent grant: Be aware when contributing code!
- License granted by initial developer and contributors (sublicensing)
- Requirements:
  - License must be preserved in the code and changes must be marked
  - Limited inheritance effect based on “modification”
    - Addition to and deletion or copying from a source code file
    - Mere linkage does not trigger inheritance effect
    - Easier to combine with proprietary code
  - Source code must be provided for the original code and all modifications
  - Distribution in executable permitted provided source code is offered

## Permissive License Notices (MIT, BSD, Apache 1.1)

- Mere permissions under copyright law
- Grant rights to use, copy, modify and redistribute
- Requirements: Copyright notices, list of conditions and disclaimers are included in the documentation if code is distributed in binary form
- No source code distribution requirement
  - Can be easily combined with proprietary code
- Implicit patent grant (?)



Apache.org



BSD Unix®



BSD Unix®

## Contamination and Software Architecture

- Proprietary code may be contaminated due to viral effect of reciprocal OSS license
  - Consequently: Source code distribution obligation also in terms of proprietary code
  - Risk of dilution of own patents applicable in the proprietary code if proprietary code falls under OSS license including (implied or explicit) patent grant
- Always check software architecture when using OSS components under OSS licenses requiring source code distribution!
  - Linkages and other interactions between all OSS components and proprietary components must be checked
  - OSS components or files thereof may need to be removed

## Suppliers using Open Source

- Are you aware of your suppliers using OSS?
- Do not allow it unless conditions regarding use of OSS have been separately agreed in your inlicensing agreement!
- Require at least:
  - Complete list of used OSS components
  - Copyright and OSS license information
  - Information on obvious patents
  - All source code for OSS components and derivatives thereof
  - Other information in order to be able to comply with OSS license terms

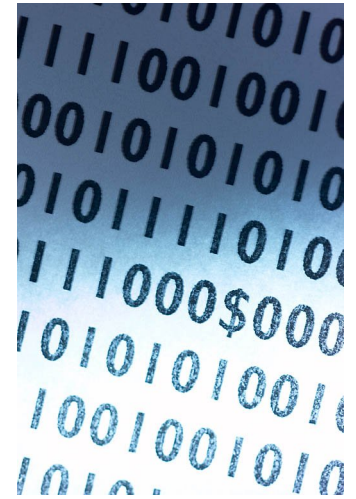
## Court Cases?

- German court decision in May, 2004
- SiteCom sold its commercial product containing GPL'ed code through its website without advising the product included GPL'ed code and providing source code for the (GPL'ed parts of) the product
- The plaintiff claimed violation of GPL and his copyrights
- Court established that GPL was violated and granted injunction



## Finally:

- Use OSS to enhance your business, but
- Know what you're doing!
- Plan your product carefully and clear:
  - Used OSS components
  - Licenses and compliance with the license terms
  - Architecture &
  - Third party rights
- Get advice in advance if need be!



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## Thank you!

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