

Open Source Softwares : Permissive v. Restrictive Licences

- Introduction
- General points about software protection
- The license : a regulation tool
- OSS licenses : GNU GPL/CECILL/BSD
- Counterfeiting : the natural risks in IP
- OSS feed-back
- Conclusion

Software : legal aspects of its protection

- An IP tool protected by copyright.
- Different attributes : moral rights + economic rights.
- Duration of the monopoly very long.
- No formality needed to obtain protection.

Applicable texts :

- France : Intellectual Property Code
- United States : Copyright Act and DMCA
- Worldwide : Berne Convention and its revisions

License : a regulation tool

- It describes the transfer of the economic rights
- A charter of rights and duties
- Two categories : proprietary and open sources
- Freedom implies responsibility

Copyright infringement : counterfeiting

- A definition : the violation of at least one of the rights attributed to software
- Several *criteria of appreciation* (territorial point of view) : sovereign appreciation of the judge who bases himself on the resemblances and not on the differences. Examples of elements taken into account: structure of the program, slavish copy of source code, sequence of the screens, order and logical organization of the functions and structures of control, numbers characters, weight, format, names of the files, functionalities...
- Sanction : prison and money compensation

OSS Licenses : GNU GPL/CeCILL/BSD

- GNU GPL : authorizes to use, modify, distribute a program. Compensation : copyright notices left, possibility to get the source code. It offers no warranties, no responsibility. Considered as viral.
- CeCILL : same rights and compensation but different approach of responsibility and warranties.
- BSD : authorizes to distribute, use, modify, with or without source code, modified or not.
Compensation: copyright notices and terms of the license are to be kept.

OSS feedback (1)

- A legal framework not tested : what is studied in courts is the compliance to contract but not the natural IPR risks.
- Illustration : The famous insurance company Lloyd's is studying the possibility to offer an insurance which will cover up to \$10 million in damages, including profit losses related to noncompliance with an open source software license. The policy could, in some cases, cover the cost of repairing code that was found to infringe on open source licenses such as the GPL.

OSS feedback (2)

- The problem of compatibility of the different licenses : news concepts appears such as OSS management, tests of the source code infringement
- An example : a tool in order to make a diagnosis of the legal status of a source code
- A defense system based on the community

Conclusion

- To choose a license, the question is not to consider whether it is permissive or not but to ask relevant questions such as :
 - Your intentions for the developments,
 - Your intentions for the distribution,
 - To keep in mind that your intentions may change.

Thank you for your attention