



October 27, 2009



**Horne, Roberts & Owen LLP**  
*Attorneys at Law*

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## ***The Evolution of Open Source Software***

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**Freedom**

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### Evolution of Open Source

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"The word "free" *does not refer to price; it refers to freedom*. The *freedom to copy* a program and *redistribute* it to your neighbors so that they can use it as well as you. The *freedom to change* a program, so that you can control it instead of it controlling you; for this, the *source code must be made available* to you."

Richard Stallman



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### Evolution of Open Source

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"You should think of 'free' as in 'free speech,' not 'free' as in 'free beer'."

Richard Stallman



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**Evolution of Open Source**

**Open Source, Not "Free"**

- 1970s and 1980s - The birth of the free software movement
  - Use, study and modify without restriction
  - Redistribute in modified or unmodified form without restriction
  - Allow recipients to do the same things
- 1990s - The software industry begins to see the potential of free software
  - 1992 - Linux OS
  - 1998 - Netscape Communicator
- Free software movement viewed as overly activist and ideological
- Open Source Initiative (OSI) formed
  - Drop the ideological overtones of free software
  - Bring the benefits of free software to the commercial software industry
  - Advocate the use of "open source" software
  - Develop an Open Source Definition (OSD) to define the principles of "open source" software

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**Evolution of Open Source**

*Free and Open Source Software*  
**("FOSS")**

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**Evolution of Open Source**

~~Open Source Software~~

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**Open Source Software is**  
*licensed software*

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**Open source licenses**  
 make the software *"open source"*

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**Open Source Licenses**

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**One**  
**Open Source Definition**

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**Many**  
**Open Source Licenses**

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**Open Source Licenses**

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**One Definition**

- The "Open Source Definition" (OSD) articulates the principles a license must meet to be "open source"
  - Availability of source code
  - Free redistribution
  - Availability of "derived works"
  - Integrity of the author's source code
  - No discrimination against persons or groups
  - No discrimination against fields of endeavor
  - License must travel with software
  - License not dependent on particular software distribution
  - License does not restrict other software
  - License technology neutral
- Maintained by the Open Source Initiative (OSI)
- OSI certifies licenses as compliant with the OSD



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**Open Source Licenses**

**One Definition - Many Licenses**

- Over 70 approved open source licenses
  - Big names:
    - GNU General Public License (GPL)
    - GNU Lesser General Public License (LGPL)
  - Other common open source licenses:
    - BSD/MIT
    - Apache
    - Mozilla
    - Common Public
- All implement the same definition, each with its own specific terms
- Many more un-approved "open source" licenses also exist
  - Based in part on OSI-approved licenses
  - Some even refer to themselves as "open source"
  - But, no guarantee that they comply with the terms of the OSD

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**Open Source Licenses**

**One Definition - Many Licenses – Many Differences**

No Strings	Strings Attached	Copyleft	Additional Clauses
<ul style="list-style-type: none"> <li>BSD License (current)</li> <li>Intel Open Source License</li> <li>MIT License</li> <li>PHP License</li> <li>Python License</li> <li>W3C License</li> <li>X11 License</li> <li>XFree86 License</li> </ul>	<ul style="list-style-type: none"> <li>Artistic</li> <li>BSD License (original)</li> <li>Common Public License</li> <li>Apache License</li> <li>Eclipse Public License</li> <li>IBM Public License (PL)</li> <li>Jabber Public License</li> <li>Netscape Public License</li> <li>Sun Binary Code (BCL) License</li> <li>Sun Community Source License</li> </ul>	<ul style="list-style-type: none"> <li>Clarified Artistic License</li> <li>General Public License (GPL) v2</li> <li>Lesser General Public License (LGPL)</li> <li>License of Guile</li> <li>Open Public License</li> <li>Perl Artistic License</li> <li>Reciprocal Public License</li> <li>SleepyCat License</li> </ul>	<ul style="list-style-type: none"> <li>Affero General Public License</li> <li>General Public License (GPL) v3</li> <li>Common Public License</li> <li>Mozilla Public License</li> <li>SISSL</li> <li>IBM Public License</li> </ul>

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**Open Source Licenses**

**Open Source vs. Proprietary Licenses**

Open Source	Proprietary
<ul style="list-style-type: none"> <li>License flows with code               <ul style="list-style-type: none"> <li>Unilateral permission</li> <li>No negotiation</li> <li>No affirmative assent to terms</li> </ul> </li> <li>Use "Permissions"               <ul style="list-style-type: none"> <li>Source and object code forms</li> <li>Copy, modify, and distribute</li> <li>May allow other end users to do the same</li> </ul> </li> <li>Permissions do have boundaries</li> <li>Limited Licensor Obligations               <ul style="list-style-type: none"> <li>No warranties</li> <li>No updates/upgrades</li> <li>No support obligations</li> <li>No infringement indemnification</li> </ul> </li> <li>Free or low cost</li> </ul>	<ul style="list-style-type: none"> <li>"Arms-length" agreement               <ul style="list-style-type: none"> <li>"Meeting of the minds"</li> <li>Often negotiated</li> <li>Affirmative assent (sign, click, etc.)</li> </ul> </li> <li>Use "Restrictions"               <ul style="list-style-type: none"> <li>Object code only</li> <li>Limited copying and use</li> <li>No reverse engineering</li> <li>No distribution</li> </ul> </li> <li>Robust Licensor Obligations               <ul style="list-style-type: none"> <li>Warranties</li> <li>Updates/upgrades</li> <li>Support and maintenance</li> <li>Infringement indemnification</li> </ul> </li> <li>Licensed for a fee</li> </ul>

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**Open source licenses  
are *legally enforceable***

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**Jacobsen v. Katzer**



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**Jacobsen v. Katzer**

**Background**

- Jacobsen developed the *DecoderPro* model railroad software
- Released *DecoderPro* under the (rarely used) Artistic License
- Katzer alleged that *DecoderPro* infringed U.S. Patent No. 6,530,329 owned by Katzer (for a "model train control system")
- Jacobsen responded that the '329 patent is invalid
  - Katzer acquired Jacobsen's software under the Artistic License
  - Included significant portions into the software covered by the '329 patent
  - Katzer's patent is thus invalid on the basis of fraud and obviousness
- Jacobsen also claimed copyright infringement
  - Katzer's obtained *DecoderPro* under the Artistic License
  - But did not observe the provisions regarding notice and attribution
  - Katzer's use of *DecoderPro* is thus unlicensed
  - Unlicensed use of software constitutes copyright infringement

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## Jacobsen v. Katzer



### History

- Jacobsen moved to enjoin Katzer from infringing his copyright in *DecoderPro*
- District Court denied Katzer's motion
  - Surprised many in the open source community
  - Interpreted the Artistic License as a contract not a license
  - Indicated that breach gave rise to monetary damages, but not injunctive relief
- Appeals court reversed and remanded back to the District Court
- District Court again denied injunction, but on different grounds
- Case continues forward on the merits

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## Jacobsen v. Katzer



### Takeaways

- The Artistic License is enforceable as a license and not a contract
- Notice and attribution provisions create *conditions, not covenants*
- Conditions are of "significant and direct" economic benefit to the licensor
- Enforcement as a license is thus necessary
  - Protect the rights of the licensor
  - Accomplish the objectives of the licensor
- Interpretation (as a contract) would render the license "meaningless" by foreclosing the ability to enforce those provisions through injunctive relief

"Copyright licenses are designed to support the right to exclude: monetary damages alone do not support or enforce that right. The choice to exact consideration in the form of compliance with the open source requirements of disclosure and explanation of changes rather than as a dollar-denominated fee, is entitled to no less legal recognition."

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## Jacobsen v. Katzer



### Takeaways

- Violations of the Artistic License give rise to claims for copyright infringement
- Opens the door to expanded remedies
  - Not just damages (as with breach of contract),
  - Remedies for copyright infringement (injunctions, statutory damages and attorney's fees)
- Likely applicable to other open source licenses as well (GPL, LGPL, etc.)
- Fascinating case

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HHO

*Open source licenses  
are **being enforced***

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License Enforcement

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FSF FREE SOFTWARE FOUNDATION



> 100 actions

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License Enforcement

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FSF FREE SOFTWARE FOUNDATION



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**License Enforcement**

**The FSF and Cisco**

- March, 2003 – Cisco buys Linksys for \$500 million
- June, 2003 – Complaints appear on discussion boards. . .

**From:** Andrew Mikles <>  
**Subject:** Linksys WRT54G and the GPL  
**Date:** Sat, 7 Jun 2003 22:41:23 -0400

Hi,

Sorry for the very lengthy posting, but I want to be as precise as possible in describing this problem.

While ago, I mentioned that the Linksys WRT54G wireless access point used several GPL projects in its firmware, but did not seem to have any of the source available, or acknowledge the use of the GPLed software. Four weeks ago, I spoke with an employee at Linksys who confirmed that the system did use these and then mentioned that he would work with his manager on

- Claiming that Linksys was violating the GPL by not providing source code for certain code used in its WRT54G wireless router
- Both Linux and other code licensed under the GPL

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**License Enforcement**

**The FSF and Cisco**

- FSF steps in to lead the "coalition of many copyright holders"
- Pursues private enforcement action against Cisco

**Linux's Hit Men**  
 NEW YORK — In the world of "hot" open source software, there is no greater name than SCO, owner of the Linux operating system. The London, Utah, company has outaged Linux lovers by suing IBM (type IBM - news - press ), claiming IBM stole Linux code and put it into Linux. Some fear the lawsuit by SCO (type SCO - news - press ) will stifle the evolution of Linux.

- Discussions characterized as "friendly"
- Parties on record that the matter will be settled without a court fight

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**License Enforcement**

**The FSF and Cisco**

- Negotiations continue
- Reports range from several months through multiple years
- Linksys eventually releases the source code at issue

**LINKSYS by Cisco** EXPLORE PRODUCTS SUPPORT VISION [Shop My Link](#)

Home Support **GPL Code Center** Home News

**GPL Code Center**

Linksys Connected Office, Linksys Business Series, and Linksys Voice System products are now part of Cisco Small Business. When you buy through a dealer or third party, you will receive more comprehensive product of reliability and resources designed especially for Small Business.

Product Model	Version	File Download
WRT54G	4.02 (03_03_04) 4.02 (04_01_04)	WRT54G_V4_02_03_04.tar WRT54G_V4_02_04_01.tar
WRT54GL	4.02 (03_03_04) 4.02 (04_01_04)	WRT54GL_V4_02_03_04.tar WRT54GL_V4_02_04_01.tar

- Most assume the FSF has moved on. . .

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## License Enforcement

### The FSF v. Cisco

- December 11, 2008 - FSF files complaint against Cisco (Case No.: 08-CV-10764, SDNY)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FREE SOFTWARE FOUNDATION, INC.  
a Massachusetts nonprofit corporation,  
Plaintiff, Civil Action No. CV \_\_\_\_\_

-against-

CISCO SYSTEMS, INC.  
a California corporation,  
Defendant.

**COMPLAINT**

This is an action by The Free Software Foundation, Inc., a nonprofit corporation organized under the laws of the State of Massachusetts (FSF), and against the defendant, Cisco Systems, Inc., a corporation organized under the laws of the State of California (Cisco).

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## License Enforcement

### The FSF v. Cisco

- In discussions with Cisco since May, 2006
- Cisco has violated the licenses of multiple programs owned by the FSF
- Programs distributed (in Linksys products) in violation of the GPL or LGPL by failing to provide corresponding source code
- Multiple good faith attempts to resolve
- Impasse reached in mid-2008
- Citing "extensive history" of violations and failure to demonstrate that it has "meaningfully improved" its processes to prevent violations, FSF is forced to take action against Cisco
- Claim of copyright infringement
- Relief in the form of
  - Unspecified damages
  - Litigation costs
  - Injunction against further use of the software

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## License Enforcement

### The FSF v. Cisco

- April 22, 2009 – Cisco settles with the FSF

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FREE SOFTWARE FOUNDATION, INC.,  
a Massachusetts nonprofit corporation,  
Plaintiff,

v.

CISCO SYSTEMS, INC.,  
a California corporation  
Defendant.

PAUL G. GARDEPHE, U.S.D.J.

WHEREAS during an April 21, 2009 conference in the above-captioned action both parties consented to a thirty-day order dismissing this action with prejudice; it is hereby

ORDERED that the above-captioned action shall be dismissed with prejudice but without costs; provided, however, that either party may apply to this Court by letter before May 22, 2009.

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #  
DATE FILED: 4/22/09

ECF CASE:  
08 Civ. 10764 (PGG)  
ORDER

- Surprisingly quiet

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## License Enforcement

### The FSF v. Cisco

- Cisco agrees to appoint "Free Software Director" for Linksys to "supervise" Linksys' compliance with the requirements of the GPL
- Free Software Director will report periodically to the FSF regarding Linksys' compliance efforts
- Cisco will take "certain steps" to:
  - Notify previous recipients of Linksys products containing FSF programs of their rights under the GPL and other applicable licenses
  - Publish a licensing notice on the Linksys website,
  - Provide additional notices in a separate publication
- Cisco will continue to make the complete and corresponding source code for versions of FSF programs used with current Linksys products freely available on its website
- Cisco will also make a "monetary contribution" (unstated) to the FSF
- FSF will continue to independently monitor Linksys' compliance and work to resolve any new issues that may arise

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## License Enforcement



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## License Enforcement

### The BusyBox Lawsuits

- Very straightforward failures to comply with the GPL
  - BusyBox was included in firmware of a device
  - BusyBox has or has not been modified
  - Device (and firmware) distributed without the BusyBox source code or a written offer to receive source code (as required by GPL Section 2)
- Claims for copyright infringement
- Relatively "innocent" violations of the GPL
- Seek relief in the form of
  - Unspecified damages
  - Litigation costs
  - Injunction against further use of the BusyBox software
- Trend toward settlement
- Common settlement terms

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**License Enforcement**

**The BusyBox Lawsuits**

- Targeted all sizes of companies
  - Most all appeared to be relatively “innocent” offenders
  - Often distributing third party products/firmware
- Only Verizon seems to have received an indemnification from its supplier
- Disputes preceded by contact with the defendants
  - Initially by “third parties”
  - Follow-up by SFLC
  - Meaningful attempts to negotiate?
- Rapid movement to lawsuits (sometimes very rapid)
- None of the defendants challenged the allegations (on the record)
- Has this become the model for GPL lawsuits?

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**License Enforcement**

**What Should You Do?**

- Increased premium on preemptive diligence and action
  - Software (and hardware) products
  - Agreements with software providers
- These are the “easy” cases, but they don’t go away
- Getting compliance remains a top priority (but donations do help)
- Process remains (relatively) cooperative
- How can you demonstrate your willingness to comply?
- Do not overlook “third party” inquiries

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**Open Source Software is**  
**Protected by patent laws**

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**Patents and Open Source**

**Patents Are Nothing New to Open Source**

- Shortly after the Novell deal, Microsoft's Steve Ballmer sounds-off on patents and open source



**Ballmer: Linux users owe Microsoft**  
He says the open-source operating system infringes on his company's intellectual property

By L.L. Taylor | Today's Top Stories | Other Linux and Unix Stories

November 16, 2004 Computerworld — In comments confirming the open-source community's suspicions, Microsoft Corp. CEO Steve Ballmer today declared his belief that the Linux operating system infringes on Microsoft's intellectual property.

In a question-and-answer session after his keynote speech at the LinuxWorld conference for SQL Server (ENR) conference in San Jose, Calif., Ballmer said:

- Linux infringes Microsoft "intellectual property"
- Microsoft wants to get the "appropriate economic return" for its innovation

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**Patents and Open Source**

**Patents Are Nothing New to Open Source**

- Later in November 2006, rumors surface of a failed deal with leading Linux provider Red Hat



**Linux & Open Source**  
Microsoft May Indemnify Some Red Hat Linux Users

By Tom Igoe | 11/16/06

**UPDATE:** The company, while trying to reach a patent agreement with Red Hat, has not agreed and seems to have granted some sort of indemnification for its customers who use Red Hat Linux.

UPDATE: One, again, while Microsoft is trying to enter into a patent deal with Red Hat under the one it can with Red Hat, the software giant has not agreed to indemnify some sort of indemnification for its customers who use Red Hat Linux.

Earlier this month, Microsoft agreed not to sue Red Hat Linux users.

- To date Red Hat and has refused to play ball
- Rumors circulate of Microsoft signing deals with individual OSS users

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**Patents and Open Source**

**Patents Are Nothing New to Open Source**

- May of 2007, Microsoft levels accusations of patent infringement against Linux and other major OSS projects



**Microsoft takes on the free world**  
Microsoft claims that free software like Linux, which runs a big chunk of corporate America, violates 235 of its patents. It wants royalties from distributors and users. Users like you, maybe. Fortune's Roger Parloff reports.

By Roger Parloff, Fortune writer editor  
May 14 2007, 9:33 AM EDT

**FORTUNE**

Fortune Magazine — Free software is great, and corporate America loves it. It's often high-quality stuff that can be downloaded free off the Internet and then copied at will. It's versatile — it can be customized to perform almost any large-scale computing task — and it's blessedly cost-free.

A broad community of developers, from individuals to

- Microsoft refuses to identify any of the 235 patents
- Claims greeted with much skepticism

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**Patents and Open Source**

**Patents Are Nothing New to Open Source**

- Late 2007, Microsoft sounds off against Red Hat
- Users of Red Hat Linux "will have to pay Microsoft" for its intellectual property

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**Patents and Open Source**

**Patents Are Nothing New to Open Source**

- In the meantime, Microsoft has (not all that quietly) built an increasingly broad patent licensing and cross-licensing program

- Unknown how many of these deals include patents implicating Linux or other open source

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**Patents and Open Source**

**Microsoft - TomTom**

- February 2009, Microsoft files suit against GPS device maker TomTom alleging infringement of eight patents

- Among them, patent numbers 5,579,517 and 5,758,352 for techniques for implementing a "common name space for long and short filenames"
- Covering Microsoft's FAT32 file system
- Microsoft claims the suit is not a direct attack on Linux

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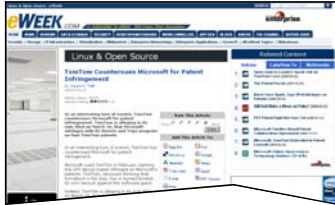
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## Patents and Open Source

### Microsoft - TomTom

- March 2009, TomTom countersues Microsoft
- Alleging infringement of four TomTom patents related to TomTom's Streets and Trips program



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## Patents and Open Source

### Microsoft - TomTom

- TomTom also joins the Open Innovation Network (OIN)



- OIN is a patent-sharing coalition including IBM, Sony, Philips, Novell, Red Hat, Google, Oracle, and others
- Members agree to not assert their own patents against the Linux software "ecosystem"
- In return, receive royalty-free licenses for patents contributed to the OIN by other members

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## Patents and Open Source

### Microsoft - TomTom

- March 30, 2009 – Microsoft and TomTom settle all issues



- Specific financial terms not disclosed
- TomTom to pay Microsoft an undisclosed amount for coverage under eight Microsoft patents for car-navigation and file-management systems
- Microsoft to receive coverage under four TomTom patents (no payment required by Microsoft)

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## Patents and Open Source



### Microsoft - TomTom

- Five-year term
- Covers both past and future U.S. sales of the relevant products
- Purports to be open source compliant:
  - The agreement includes patent coverage for Microsoft's three file management systems patents provided in a manner that is fully compliant with TomTom's obligations under the General Public License Version 2 (GPLv2).
- TomTom will drop FAT-patented parts of its products:
  - TomTom will remove from its products the functionality related to two file management system patents (the 'FAT LFN patents'), which enables efficient naming, organizing, storing and accessing of file data. TomTom will remove this functionality within two years, and the agreement provides for coverage directly to TomTom's end customers under these patents during that time.
- Microsoft is passing patent protection to TomTom's 'end customers'
- Similar to the scheme of the Microsoft-Novell patent agreement
- Suit may be over, but issues live on. . .

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## Patents and Open Source



### The Firestar Case



- Firestar sued Red Hat on June 28, 2006
- Eastern District of Texas
- Alleged that the JBoss Hibernate 3.0 technology infringed U.S. Patent No. 6,101,502 directed to "a method of interfacing an object oriented software application with a relational database."
- Patent was later assigned to patent holding company DataTern (and its parent company Amphion Innovations)
- First patent infringement suit targeting an open source project
- Settlement reached before much activity took place

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## Patents and Open Source



### The Firestar Settlement

- Settlement terms are public:  
[http://www.redhat.com/f/pdf/blog/patent\\_settlement\\_agreement.pdf](http://www.redhat.com/f/pdf/blog/patent_settlement_agreement.pdf)
- Very broad:
  - All software licensed under the Red Hat brand (whether developed by Red Hat or third parties)
  - Derivative works of Red Hat branded products and combinations of software including Red Hat branded products
  - Upstream developers as well as predecessor products of Red Hat branded products
  - Distributors, customers, and everyone
  - All patents owned by DataTern and Amphion
- Contrast with the Microsoft settlement with TomTom
- Which will become the model for open source patent infringement settlements?

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**Open Source Software is**  
**An issue in transactions**

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**Open Source in Transactions**

**What To Expect**

- Increasingly important role means increasing concern in transactions
- Diligence requests have evolved
  - Enhanced diligence requests (including specific open source requests, interviews with key personnel, etc.)
  - Open source code assessments
  - Attempts to resolve/remediate issues
- Reqs have evolved
  - Open source inventory
  - Compliance commitment
- Not all parties are fully informed
  - Beware of overly broad requests
  - Be prepared for incomplete, incorrect and inaccurate responses
- Increased premium on preemptive action
- Increased risks (and hassles) for the unprepared

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**Open Source in Diligence Requests**

**"Open Source Software"** means any software that is generally available to the public in source code form under licenses substantially similar to those approved by the Open Source Initiative and listed at <http://www.opensource.org>, which licenses include, without limitation, the GNU General Public License, GNU Lesser Public License, Berkeley Science Division (BSD) License, and Apache License.

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## Open Source in Transactions

### What Should You Do?

- Focus on open source-specific provisions
- Recognize that other provisions will likely apply to open source as well
  - Third party license-in agreements
  - Third party IP infringements
  - Rights in third party developed software
  - Confidentiality and protection of trade secrets
  - Source code disclosure prohibitions
  - Compliance with applicable laws
  - Indemnification provisions
  - Compliance policies and procedures
- Premium on preparation
- Comply or be forced to comply

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HRD

**Cause for  
~~Concern?~~  
Compliance**

Copyright 2010 Pearson Education, Inc.

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HRD

**You are already using open source**

Copyright 2010 Pearson Education, Inc.

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HRD

**Usage and Compliance**

 THE open source CENSUS

**Reported usage  
averages 94 packages**

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**Actual usage typically  
exceeds reported usage by 3x-10x**

Copyright 2010 Pearson Education, Inc.

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**Usage and Compliance**

*Be prepared to explain  
your usage of open source*

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**Usage and Compliance**

*But what if I don't ship software?*

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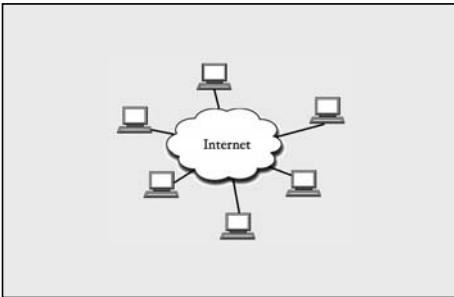
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**Usage and Compliance**



The diagram shows a central cloud labeled "Internet" with several laptops connected to it, representing a network or cloud environment.

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**Usage and Compliance**

**GPL**  
**Distribution**

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**Usage and Compliance**

**Open Source and the Cloud**

- GPLv2 is triggered by distribution
- Merely running the program is not covered by the license

**GNU Operating System**

Home Philosophy Licenses Downloads Help GNU About Us / GPL

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Version 2, June 1991

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**Usage and Compliance**

**Open Source and the Cloud**

- GPLv3 is triggered by a conveyance
- Specifically does not include use over a network

**GNU General Public License**

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Version 3, 29 June 2007

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**Usage and Compliance**

**Open Source and the Cloud**

- The Affero GPL does cover use over a network
- Treats use over a network as a distribution or conveyance under the GPL

**GNU Affero General Public License**

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Version 3, 19 November 2007

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**Usage and Compliance**

***“So doesn't this mean that the GPL is the new BSD license and that Google is the new Microsoft ?”***

**Bradley Kuhn**  
Former executive director of the FSF

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**Usage and Compliance**




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## Usage and Compliance



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*Business models are (increasingly)  
based on Open Source*

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*Who's <sup>Not</sup> doing it?*

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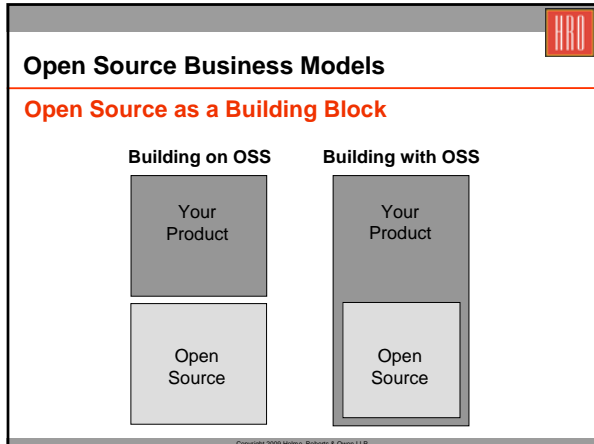
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- ## Open Source Business Models
- ### Open Source as a Building Block
- Building software on or with an OSS platform
  - Open source is a substitute for proprietary software
    - Lower-cost
    - Higher quality
  - Build, buy, or open source
  - Big issue: license compliance
  - Know where the decision to use open source differs from the decision to use proprietary software
    - Maintenance
    - Support
    - Performance warranties
    - Indemnification

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- ## Open Source Business Models
- ### Services for Open Source
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- The diagram shows a box labeled 'Your Services' with a smaller box labeled 'Open Source' nested inside it at the top.
- Services supporting and surrounding open source
  - Most prevalent model
  - Started with Linux and quickly spread
  - Make the open source experience more like that of commercial software
  - Examples
    - Support and maintenance
    - Consulting
    - Training
    - Integration and customization
    - Development
    - Updates, testing, certification, and management
    - Indemnification and insurance

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**Open Source Business Models**

**Open Source as the Product**

**Building OSS**



- Develop and Release a product as open source
  - Start a new open source project
  - Open source existing proprietary software (or portions of existing software)
  - Extend an existing open source project
- Build a community around the product
- Let community drive product definition
- Models
  - Dual-licensing
  - "Widget frosting"
  - Services
  - Value-added modules

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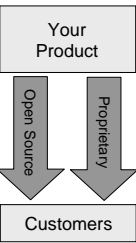
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**Open Source Business Models**

**Open Source as the Product**

**Dual Licensing**



- Offer a choice of licensing options
- Provide broader commercial rights for those who need them
  - Fee-based
  - Service and support provided
  - Broader commercial rights
- Provide open source option as well
  - Usually unsupported
  - Subject to open source license terms
  - Develop and benefit from an open source community
- Multiple open source license options
- Ownership of the code base is key

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**Open Source Business Models**




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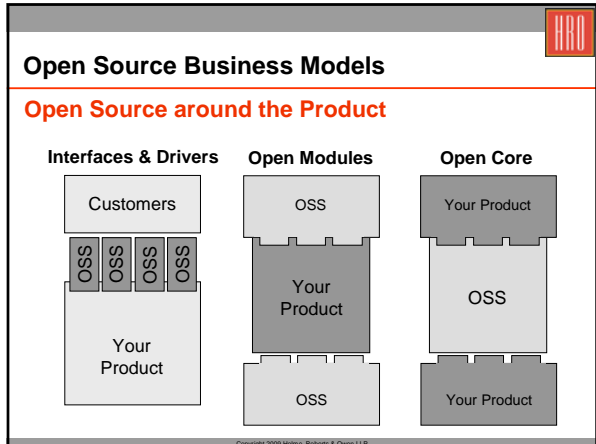
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- ## Open Source Business Models
- ### Open Source around the Product
- Release of complementary software as open source
    - Often includes software traditionally provided under a proprietary license (toolkits, drivers, interfaces, unsupported extensions, etc.)
    - Draw customers to the core product
    - Track customer needs
  - Provide proprietary modules and extensions to open source projects
    - Benefit from the community support of the open source project
    - Monetize the proprietary modules and extensions
    - Lock-in commercial users to your modules and extensions project
    - Provide support or other services for the open source project
  - Provide open source modules and extensions to proprietary software
    - Maintain overall control of the core product
    - Let the users drive development (of interfaces, niche features, other functionality not on product roadmap)
    - Support a certification program?

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## Open Source Business Models

*What's next?*  
**Open Source-Proprietary Hybrids**

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**Closing Thoughts**



*Increasingly  
unwise not to consider  
open source*

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*Increasingly  
unrealistic to avoid  
open source*

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**Closing Thoughts**



*With proper attention  
open source*

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*need not be any more risky  
than proprietary software*

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**Thank You.**

jason.haismaier@hro.com

<http://twitter.com/haismaier>



**Helene Roberts & Owen LLP**  
*Attorneys at Law*

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