

Open Source Licensing: Software Freedom and Intellectual Property Law

By Lawrence Rosen

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Computers have become an essential part to many peoples everyday life. In 2001, it was estimated that almost 90% of school-aged children were computer users.¹ As these children grow, computers will become even more indispensable in our lives. That being said, knowledge of the development of software and the various formats it is available in could become extremely advantageous in ones personal advancement.

One of the prominent avenues of software development has been through open source licensing. Open source software has been described as software freedom.² However, Rosen sets out to prove that freedom does not necessarily have the everyday meaning that we associate with it. He states that software freedom is the goal of the community and open source code is the means to achieve that goal.³

The analysis of open source software is broken into three distinct parts. The first is a review of the general terms and basics to allow the uneducated reader to become educated and to serve as a basic refresher to others. The second section focuses on the distribution of the open source software. Finally, the third section focuses on the various licenses that allow the software to be distributed and the rights that both the user and

¹ Susanna Frederick Fischer, The Global Divide Focusing on Children, 24 Hastings Comm. & Ent. L.J. 477, 482 (2002).

² LAWRENCE ROSEN, OPEN SOURCE LICENSING: SOFTWARE FREEDOM AND INTELLECTUAL PROPERTY LAW (2005).

³ *Id* at 3.

creator have under that specific license. The book is written on a level that can be beneficial to both the expert and the novice. This is done by focusing on explaining the basics while at the same time incorporating an in depth discussion of the material.

Rosen lists five open source principles, which he feels best describe open source software. The first is that “licensees are free to use open source software for any purpose whatsoever.”⁴ Essentially, the user can use the software without any impediments to his use. The second principle is that “licensees are free to make copies of open source software and to distribute them without payment or royalties to a licensor.”⁵ However, this only means that the party cannot charge for additional copies of the software and does not mean that the licensor cannot charge for the original copy of software. The third principle is that “licensees are free to create derivative works of open source software and to distribute them without payment of royalties to a licensor.”⁶ Fourth, “licensees are free to access and use the source of the open source software.”⁷ Finally, “licensees are free to combine open source and other software.”⁸ These principles are essential, according to Rosen, to have legitimate open source software. In addition, these principles are essential to the development of his book.

The most vital aspect of the open source license is by name, the actual license. The license itself can come in a variety of different forms. Each license fulfills the requirements of the principles above, however, it has varying terms to achieve that goal. Licenses are used in many different applications and generally it gives the licensee the

⁴ *Id.* at 8.

⁵ *Id.*

⁶ ROSEN, *supra* note 2 at 10.

⁷ *Id.*

⁸ *Id.*

permission to do a specific thing. They can extend from granting permission to enter one's land to the use a copyright and patent holder gives to people using their software.

In terms of open source software there are four main categories of licenses which the different open source licenses can fit in to. The academic licenses are licenses that to distribute software created at academic institutions. These licenses allow the licensee to use the software for any purpose whatsoever and do not place any specific requirements on the licensee regarding derivative works. Reciprocal licenses are written similarly to the academic license. However, the reciprocal license requires that any derivative work be released using the same license. Standards licenses "are designed primarily for ensuring that industry standard software and documentation be available to all for implementation of standard products."⁹ Finally, content licenses state that other material such as art, content and data are equally included for any purpose whatsoever.

Throughout this book Rosen delicately describes the entire process of creating and licensing open source software. When he feels he is neglecting certain material, he informs the reader and directs the reader to gather more knowledge on that specific subject before proceeding with releasing any open source material. However, the information that he might neglect is only detailed information on a specific area. It is not information that the reader would need to gain adequate knowledge of open source software and its legal applications.

It is quite possible that this review is being read with open source software. Whether it is Mozilla, Firefox or any of the other prominent releases that are available to the public, open source software is becoming more and more prominent in the world.

⁹ *Id.* at 70.

This book gives that reader using open source software a description of what is behind the software they are using and gives the professional reader a step by step guide to creating an effective open source license. For a review of open source software or an introduction to the legal process behind it the interested party would be well served in reading this book. Even for the expert, you are sure to discover something new on every page. Overall, Rosen presents a compelling description that is sure to serve both the legal and technological community well.