

OPEN SOURCE SOFTWARE LICENSING

Matthew I. Cohen
Registered Patent Attorney
MCohen2010@live.com

LEGAL PROTECTION FOR SOFTWARE 101

- Patents: 35 USC §1 et. seq.
- Trademarks: 15 USC §1051, et. seq.
- Copyrights: 17 USC §101, et. seq.
- Trade Secrets: Varies state to state

PATENT PROTECTION

- Protects the method, not the code
- Owner of patent may prevent anyone else from practicing the invention without authority
- Bilski: Must not be abstract idea
- 20 years (+) from date of application
- Time from application to grant of patent is approximately 3-4 years
- Cost: On average: \$10-12K

TRADEMARK

- Does not protect code or method
- Protection relates only to a symbol, logo, phrase, etc. that the consumer associates with the software product

COPYRIGHT

- Protects the code, not the method
- Owner of copyright controls use of copyrighted material
- Fair use exceptions
- Must register with US Copyright Office to enforce
- Rights attach when code is created
- Rights originally owned by author, not employer
- Registration very inexpensive

TRADE SECRET

- Law varies state by state
- **MUST KEEP SECRET**
- No registrations necessary

TRANSFER OF IP RIGHTS

- Assignment
 - Transfer of everything
- License
 - Transfer of less than everything

SOFTWARE LICENSES

- Transfer some of the patent, copyright or trade secret rights to another party
- Limited by use, geography, resale, industry, time, etc.
- Can be explicit or implied
- Personal right: not transferable unless it says so

OPEN SOURCE SOFTWARE

- NOT PUBLIC DOMAIN
- Software licensed under an “open source” license
 - Access to source code
 - Modify, create derivatives, distribute
 - No warranties

COMMON OS LICENSES

- Apache 2.0
- BSD
- GPL
- IBM Public License
- MIT
- Mozilla

Common Clauses

- Most licenses require that any OS software that is redistributed must allow access to source code, not just executables
- Scope of Coverage (what software is controlled by license)
- Release
- Scope of License grant
- Notice
- Liability
- Scope of Patent License

Controlling Source Code

- Code control should start at beginning of development cycle
- Place responsibility for code sourcing with select person (IT, product management)
- Catalogue known sources
 - Keep approved list
 - Block unapproved sources of source

Controlling Source Code

- Set general guidelines for code control process
- Communicate with entire development team (in house and contract)
- File copyrights on in-house developed source
- Audit when necessary

Derivative issues

- Avoid making derivatives from OS code, if possible
 - No direct line by line revisions
 - Use modular architecture
 - Use plug ins/modules
 - Separate file structures
 - Use OS only at runtime
 - Interact with OS via API, pipes, sockets
 - Use DLLs

DO NOT ASSUME

- When using OS code, do not assume that the source of the source is compliant with all licenses. DO YOUR HOMEWORK!!!