Who wrote software that someone else ever used? Open source, commercial (job)? What license?
Intellectual Property Rights

- Copyright (auteursrecht, protect works)
- Patents (octrooirecht, protect ideas)
- Trademarks (merkenrecht, protect names)
- Moral Rights (morele rechten, incl. portretrecht)
- Related Rights (naburige rechten, producers)
- Database Right (databankenrecht)
- Geographic Indication (appellation d'origine contrôlée)
- Plant Breeders’ Rights (kwekersrecht)

Copyright does protect original names as well.
Author’s Property Rights

- Economic Rights. Transferable.
- Berne Convention for the Protection of Literary and Artistic Works (1886).
- Copyright: protects works, not ideas.
  - Automatically granted (No need for a “copyright notice” – in the USA since 1989)
  - Finite time, but at least life span + 50 years protection (in EU: + 70 years since 1995).
- Patents: protects ideas
  - Not automatically granted (Need to file an idea)
  - Finite time: 6 - 20 years protection.
  - Some countries also have Utility Rights (patents with short time span)

USA signed Berne Convention in 1989. Before that, you needed a copyright notice.
Netherlands joined in 1912.
Copyright protect original names, but most important for names is Trademark, which also applies to domain names.
Moral Rights

  “Independently of the author's economic rights, and even after the transfer of the said rights, the
author shall have the right to claim authorship of the work and to object to any distortion, mutilation
or other modification of, or other derogatory action in relation to, the said work, which would be
prejudicial to his honor or reputation.” – 1928 addition to Berne Convention.

* Difference in legislation between countries.
  * Very limited in the USA. Relative extensive in Europe.

* Netherlands (restrictions on auteurswet 1912):
  * Beeldrecht (art. 18 Auteurswet)
  * Portretrecht (art. 19-21 Auteurswet)
  * Moreel recht (art. 25 Auteurswet)

An author may sign a clause stating that he/she won’t exercise these rights.
http://wetten.overheid.nl/cgi-bin/deeplink/law1/title=Auteurswet%201912/
Beeldrecht: bouwkunde, letterkunden, wetenschap, kunst.
Related Property Rights

- Related (Neighbouring) Rights (Naburig Recht)
- Rights of other people than the author
  - Performers (e.g. musicians), broadcasters, phonogram and film producers
  - Database creators
- Netherlands (wet op naburige rechten, 1993):
  - SENA and NORMA are for related rights; BUMA/STEMRA is for authors.
- Database Right: protects collections
  - Since 1996, 15 years protection.

film: director is author, producer is neighbouring right
Semi–conductor topologies (mask work) also part of related rights, but unclear to me why.
Copyright

- **Auteurswet (1912).**
  “Het auteursrecht is het uitsluitend recht van den maker van een werk van letterkunde, wetenschap of kunst, of van diens rechtverkrijgenden, om dit openbaar te maken en te verveelvoudigen, behoudens de beperkingen, bij de wet gesteld.”

- **Gives authors *exclusive* rights:**
  - to produce copies or reproductions of the work and to sell those copies
  - to import or export the work
  - to create derivative works
  - to perform or display the work publicly
  - to sell or assign these rights to others
  - to transmit or display the work

- **Copyright allows authors to not do something. is a negative right: it prohibits.**
Exceptions to Copyright

- **Fair Dealing**
  - Netherlands: limited in scope (Citaatrecht, art. 15 Auteurswet; Parodie, art. 18 Auteurswet)
  - USA: “Fair Use”. Unique to USA. Broad scope, related to freedom of speech amendment

- People are allowed to copy for strictly personal use, even when downloaded from the net.

- Libraries may rent book (leenrecht)

- News media may copy news with source.

- Create alternative versions for blind persons (USA)
Who ever read a shrink-wrap license?+
What does it say?
Are they always so strict?
Is it enforced?
Other Windows XP problem: Other hardware (same instance on Bootcamp did not work in Parallels).
Usage Restrictions

- **Single-Computer License**
  - **Computer**: You can use this license on this computer, and so can any other user of this computer. However, you should not install this license on more than one computer.

- **Single-User License**
  - **Personal**: This license is for your personal use, and will only be available on this computer when you are logged on as the user who installed the license. You can install this license on more than one computer, but only for your personal use. You should not use the software on two different computers at the same time with this kind of license.

- **Limited Seat License**
  - **Network**: This license sits on your network and is available to any user on the network. However, only a certain number of users (indicated by the number of "seats") can use the license at one time.

*Descriptions taken from OmniGraffle license options*

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**Basic license**: only use for either 1 computer or 1 user.

**1 computer**: forced by Microsoft, Adobe Creative Suite 2.
More Restrictions

- You can not produce copies or reproductions for personal use
- You can not sell those copies for commercial use
- You can not study the internals of the software
- You can not fix bugs
- You can not create derivative works
- You can not sell or assign these rights to others for derivative works
Open Source

- The author retains the copyright.
- The author distributes the work with a very liberal license.
A “Liberal” License

- Use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the Software.
- You must keep the copyright message.
- You must acknowledge the author in the derivative.
- Restrict liability of the author (“as is”).
- Non-endorsement of derivatives by author.
- **If** you publish derivatives, you must disclose changes.
- Derivatives must use the same license.
- You must always disclose changes, even if you don’t intend to distribute it.

If you put it in “public domain” – you can still be liable in some jurisdictions.
MIT = free use, keep copyright
3-clause BSD = MIT + Non-endorsement
4-clause BSD = 3-clause BSD + acknowledgement
Last statement is uncommon in software, but sometimes seen at standardization bodies (IETF, W3C, IEEE, ISO, etc.) Fails the “desert island” check.
Open Source Licenses

- GPL (v2, v3)
- LGPL
- BSD
- MIT
- Apache
- Creative Commons (v2, v3)
- Mozilla Public License
- Apple, Python, MS Permission License, PHP, PGP

http://www.opensource.apple.com/darwinsource/10.4.9.ppc/xnu-792.17.14/
Story: Netatalk & OpenSSL

Question:

- Who of you wrote a C program?
- Who of you ever created a derivative work of libc?
- No?
- The FSF disagrees if you linked against libc.

Note: GNU makes explicit exemption for linking against system libraries, like libc, but the general rule holds: linking against a library equals creating a derivative work.
Story: Netatalk & OpenSSL

After upgrading to Debian Sarge, my password was send in clear text.

OpenSSL: OpenSSL license (old BSD-style)
Netatalk: GPL

GnuTLS: OpenSSL under GNU license

6. Redistributions of any form whatsoever must retain the following acknowledgment: “This product includes software developed by the OpenSSL Project for use in the OpenSSL Toolkit (http://www.openssl.org/)

http://www.opensource.apple.com/darwinsource/10.4.9.ppc/xnu-792.17.14/
Story: Netatalk & OpenSSL

- **OpenSSL**: OpenSSL license (old BSD-style)
  - Redistributions of any form whatsoever must retain the following acknowledgment: “This product includes software developed by the OpenSSL Project for use in the OpenSSL Toolkit ([http://www.openssl.org/](http://www.openssl.org/))”

- **Netatalk**: GPL
  - You may not impose any further restrictions on the recipients' exercise of the rights granted herein.

- Linking Netatalk to OpenSSL (even dynamic linking) creates a derivative work, which may not be distributed.

- FSF sometimes even argues that even the source code of Netatalk violates the GPL.

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dinsdag 11 september 2007

GnuTLS: OpenSSL under GNU license. Duplicate open source effort.
Last item is not generally held, nor enforced.
Linking is never tested in court as far as I know.
Story: RFC Licenses

- The IETF requires authors to grant the IETF the right to make derivative works.

- The default license allows full distribution, including translations, but not other derivative works.

- Authors may grant (or revoke!) the right to make derivative works. Few authors know about this...

- Debian does not allow RFCs in main distribution, and it is unclear if you can copy source from RFCs.
Story: Patents

- **ZCIP**: implementation of link-local IP addresses (RFC 3927). Three patent claims filed with IETF.
- Author withdrew GPL-licensed ZCIP package because he didn’t want to be involved anymore.
- I sorted the Patent issues (Apple confirmed that it’s two patents expired, and Microsoft already let the IETF know it granted royalty free license).
- People seem to be scared about patents.
- IETF allows standards covered by patents, as long as there is a RAND licensing scheme (RFC 3979).

- cc-ing people was not appreciated: US patent law makes a difference for people who are aware of a patent.
- Contacting Apple legal was hell. Stuart Cheshire was pragmatic.
- “I've still got a bad taste about this, and don't really feel like helping Apple sell iMacs, while taking chances with being sued.”
- in Science: people pick different topic.
- RAND = Reasonable and Non-Discriminatory. Not necessarily free.

http://www.ietf.org/ipr
Apache versus GPLv2

- Apache License 2.0, section 3 states: “[...] each Contributor hereby grants to You a [...] royalty-free, irrevocable [...] patent license”

- “If You institute patent litigation [...] alleging that the Work [...] constitutes direct or contributory patent infringement, then any patent licenses granted to You under this License for that Work shall terminate [...]”.

Boils down to: derivative work must use same software license, if you use software license you must grant royalty free patent license. How to protect from 3rd party software patents. Apache use conditional restriction. Restrictions are bad for GPL.

http://www.apache.org/licenses/LICENSE-2.0

Incompatible with GPLv2, compatible with GPLv3 (art 11). Other GPLv3 change: indemnification of upstream licensors.
DRM/TPM Free?

- Can people distribute derivative work under DRM? Creative Commons image on a Sony Playstation?
- What if the image is also distributed in a non-DRM medium parallel to the DRM stuff?
- Can the author limit the usage of images on DRM-medium?

Creative Commons v3 did not change this (sect 4a: no technological measures), although it fixed all other Debian issues. (+ added non-endorsement, databanks, moral rights.
Debian vote 2006_001: GFDL with non-invariants is free
http://wiki.creativecommons.org/Version_3
DRM/TPM Free?

Creative Commons says: You can’t distribute on DRM medium. Parallel distribution is too complex. “You may not impose any effective technological measures on the Work”, section 4a, Creative Commons v3

Debian says: that is a restriction, and thus not “free” anymore. Thus you can’t distribute CC docs with Debian main.

GPL version 3 says something similar. Does this mean GPLv3 is non-free according to Debian?
“No covered work shall be deemed part of an effective technological measure”, art. 3 GPLv3

No: the formulation is difference, and is not a restriction, but an assertion.

Creative Commons v3 did not change this (sect 4a: no technological measures), although it fixed all other Debian issues. (+ added non-endorsement, databanks, moral rights. Debian vote 2006_001: GFDL with non-invariants is free GPLv3 forces you to disclaim Tech Protection Measures: Non-free? http://wiki.creativecommons.org/Version_3
Author’s Choices

- Can combine with proprietary and redistribute
- Can combine with GPL’ed code and redistribute
- Must share source of redistributed version (open source)
- Must include patent license with contribution
- May (also) distribute with DRM
- Derivative must use same license (lock-in)
- No-liability, Non-endorsement, Attribution
<table>
<thead>
<tr>
<th>License</th>
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<th>Must Share Source</th>
<th>Free Patent</th>
<th>On DRM?</th>
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<tr>
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<td>Yes</td>
<td>Yes*</td>
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</table>

**Lock in warning:** GPLv2 is incompatible with GPLv3; CC share-alike is incompatible with GFDL (thus can’t mix wikipedia with wikitravel)

*CC SAv3 has less lock in, because it allows “compatible licenses”, such as GFDL. In practice, it’s not (yet) defined as such.

Questions?

*Disclaimer: I am not a lawyer. This presentation is for educational purposes only. It’s not a legal advice. Use your own judgement about its value. If you do not have such common sense (e.g. you are a lawyer) or like to see warranties, intended-audience or as-is statements, then the following applies: you do not understand the concept of satire and are not allowed to use this presentation.*

Discussion: free (as in DFSG) also includes the freedom of others to abuse the software (e.g. using DRM or patents).
Lock-in (as GPL or CC-SA) is harmful. (FSF says: yes, but necessary, and therefor it is best to only have one license, e.g. GPL)
Questions!

- Free (as in DFSG) also includes the freedom of others to abuse the software (e.g. using DRM or patents).

- Lock-in (as GPL or CC-SA) is harmful, since it forces duplicate efforts (e.g. OpenSSL vs GnuTLS)
  FSF says: yes, but necessary, and therefor it is best to only have one license, e.g. GPL.

You may also blame OpenSSL, but the lock–in applies to other situations (e.g. GPLv2 vs. GPLv3).