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Dual Licensing OSS – You Can Have Your Cake and Eat It

Category: News
Region: Switzerland
Field of law: IP Law

EDITIONS WEBLAW

[Rz 1] Open Source Software (OSS) is free[1] software in human accessible code. If and once you have decided to publish[2] your software as OSS, you need to decide under which license to do so. There are many OSS licenses available. It is recommended using one of the approx. 90 licenses that have been approved by the Open Source Initiative (OSI)[3] as they are widely used and accepted. The bandwidth of OSS is broad and ranges from permissive to copyleft. A *permissive* OSS license is a non-copyleft license that guarantees the freedom to use, modify, and redistribute, but also permits proprietary derivative works.[4] MIT[5] and BSD[6] are two popular permissive OSS licenses that basically allow you to do whatever you want with the software. OSS with a strong *copyleft* effect refers to licenses that allow derivative works only under the condition that the *modified* version be licensed under the same license.[7] GPL[8] and LGPL[9] are popular copyleft OSS licenses.

[Rz 2] How can you boost innovation, increase popularity and promote dissemination of your software, and still earn a buck? How can you have your OSS cake and eat it?

[Rz 3] OSS undisputedly fosters dissemination of code, especially if it is royalty-free. Why would anyone (e.g. company) pay you a license fee for your software if others (e.g. university) get it royalty-free under an OSS license? Could the company not just ask the university for a copy of your software – after all, it is open source? Yes, it could.

[Rz 4] The trick of an OSS business model is to dual-license the software.[10] This requires the choice of the appropriate OSS license. It might seem counter-intuitive, but the OSS license used for dual licensing cannot be permissive. The software needs to be released under an OSS license with strong copyleft effect. This will ensure that the software is improved and remains open-sourced.

[Rz 5] The viral copyleft effect will prevent any owner of proprietary software from integrating any derivative work of the OSS in her proprietary software because the entire code would need to be released under the same OSS license.[11] If the software is interesting for the owner of proprietary software, she will likely agree to trade-off the unwanted copyleft effect of the OSS license against a license with a license fee. You achieve the best of both worlds: Profit from the advantages OSS gives you and still earn royalties.

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[1] As in free speech, not free beer, tinyurl.com/q7gty8t.

[2] See e.g. GitHub, https://github.com.

[3] Till Jaeger/Axel Metzger, Open Source Software, 4. A. 2016, para. 24 et seq.

[4] TL;drLegal, #Permissive Licenses, tinyurl.com/hvfgs5b.

[5] Authored by the Massachusetts Institute of Technology (MIT), tinyurl.com/p6pekvo.

[6] Berkley Software Distribution, authored by the Regents of the University of California, tinyurl.com/zsarfob.

[7] TL;drLegal, #Copyleft Licenses, tinyurl.com/zztow5t.

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[9] GNU Lesser General Public License, authored by the Free Software Foundation, tinyurl.com/pxuumlr.

[10] Jaeger/Metzger (FN 3), para. 114 et seq.

[11] Jaeger/Metzger (FN 3), para. 45 et seq.