

The GPLv3 from the service & development industry perspective

Benjamin Jean
IP Lawyer
bjean@linagora.com

LINAGORA

27 rue de Berri

75008 PARIS

Tél. : 01 58 18 68 28

Fax : 01 58 18 68 29

*Ensemble,
réussissons
les grands projets du Libre*

- ✓ What are the different needs in the service & development industry
- ✓ What have we done and what the new GPLv3 is changing
- ✓ Conclusion

- ✓ A free license is a **free** (*gratis*) contract based on a **non-exclusive copyright** license
- ✓ Consequences are basically that:
 - ✓ We **have to** share our (copyrightable) works — and our clients too (if they distribute): **non exclusivity** is the main aspect of free licenses
 - ✓ Copyleft licenses (like the GPL) do not restrict the licensees to add more licenses
 - ✓ We can use other exclusive rights to control exploitation of our product
 - ✓ Trademarks (i.e. Red Hat and many others)
 - ✓ Patents (useless)
 - ✓ Contracts are very important
 - ✓ Traditional civil actions still apply (false designations of origin; concurrence; common law; etc.)

- ✓ Building our « best practices »
 - ✓ About licenses
 - ✓ Use of fixed licenses in determinate cases
 - ✓ Choosing or composing a family of licenses (CeCILL, GNU, OSL/AFL, etc.)
 - ✓ If necessary, add an exception to one of these licenses
 - ✓ Use of generic files to complete or interpret blurred licenses/terms
 - ✓ Sometimes it's safer not to follow the FSF linking legal theory
 - ✓ About contracts
 - ✓ The importance of owning copyright: dual licensing
 - ✓ Definitions: rights (use of free licenses) and material warranty (you **can** do what you are allowed to)
 - ✓ About technical aspects
 - ✓ A guideline for developers to use free software
 - ✓ Information: Flossology, Flossbaazar

✓ Advantages :

- ✓ Very clear, well-known and easily understandable license
- ✓ A ready-to-use family of licenses (GNU GPL/LGPL/"BSD"/AGPL)
- ✓ Only one concern: copyright
- ✓ No sublicense

✓ Disadvantages :

- ✓ Compatibility issues (GNU GPLv2/v3 and a lot of other licenses : Apache, CDDL, OSL, etc.)
- ✓ A huge need of interpretation
- ✓ Some loopholes (i.e. ASP)

✓ Advantages

- ✓ Clarification :
 - ✓ One main license
 - ✓ Well-written license (definition, wording, etc.)
 - ✓ Compatibility (unlock a lot of insoluble issues)
 - ✓ No sublicense: "Sublicensing is not allowed; section 10 makes it unnecessary."
- ✓ Confirm implied permissions
 - ✓ You can add permissions
 - ✓ You can't add restrictions: in fact you can dual license but the GPL is unchanged
- ✓ A smooth path to compliance
- ✓ Up to date:
 - ✓ Sources can be on different servers
 - ✓ Torrent
 - ✓ etc.

✓ Disadvantages:

- ✓ Complexity:
 - ✓ The new GNU GPL is harder to understand (for non-jurist people)
 - ✓ Some elements changed: « corresponding source » of « source code » (more than copyright)
- ✓ Compatibility:
 - ✓ « Hegemonic »: the CDDL-type of copyleft
 - ✓ Compatibility with the AGPL is a loophole (article 13)
- ✓ The GNU GPL add some big restrictions and obligations:
 - ✓ About the source code; the patent, DRM, tovoisation, etc.
 - ✓ Retroactivity questions?
- ✓ License is « against » (*Linus*: against DRM, Patents, Tovoisation, etc.)
- ✓ There are only one GPL for the FSF: the GPLv3

- ✓ We use the GNU GPLv3
 - ✓ Why (The license become part of bigger process):
 - ✓ Sometime we're forced to use the licence (because of libraries)
 - ✓ Sometime we choose to use the license (but GPLv2 is still preferred)
 - ✓ How:
 - ✓ Without modification in many cases
 - ✓ With some additionnal permissions and/or restrictive terms
 - ✓ But
 - ✓ Other licenses: OSL, CDDL, CeCILL, etc.
 - ✓ SaaS: only GPLv3 for TOSCA (a SaaS)
- ✓ Fear about next developments :
 - ✓ What next in version 4 ?
 - ✓ LGPL v3 became an exception
 - ✓ AGPL is a full license...
 - ✓ GNU GPLv3 only ?

- ✓ Clément-Fontaine (Mélanie), Les Œuvres Libres, Thèse sous la direction du Professeur Michel Vivant, Montpellier 1, 2006
- ✓ Vivant (Michel), Le Stanc (Christian), et al., Lamy droit de l'informatique et des réseaux, éd 2005,
- ✓ ROSSI (MARIA ALESSANDRA), « Decoding the "Free/Open Source (F/OSS) Software Puzzle" a survey of theoretical and empirical contributions », Università degli Studi di Siena DIPARTIME
- ✓ Välimäki (Mikko), The Rise of Open Source Licensing : A Challenge to the Use of Intellectual Property in the Software Industry, Turre Publishing, 2005, CC by-sa-nd 2.0,
- ✓ Jean (Benjamin),
 - ✓ « Option libre » : Compatibilité entre contrats, DEA Droit des Créations Imatérielles, sous la direction du Professeur Michel Vivant, 2006, disponible sur le site, NTO DI ECONOMIA POLITICA, n. 424, Avril 2004.
 - ✓ La propriété intellectuelle dans l'industrie de l'open source, Gazette des nouvelles technologies,
- ✓ Rosen (Lawrence E.),
 - ✓ « Open Source Licensing : Software Freedom and Intellectual Property Law », Upper Saddle River, N.J. : Prentice Hall PTR (2004),
 - ✓ « Derivative Works », 2002.
- ✓ ATICA, Guide de choix et d'usage des licences de logiciels libres pour les administrations, décembre 2002 ; Guide de choix et d'usage des licences de logiciels libres pour les administrations : Analyse détaillée des licences, décembre 2002.
- ✓ CSPLA, Rapport « LA MISE A DISPOSITION OUVERTE DES ŒUVRES DE L'ESPRIT », Valérie-Laure BENABOU et Joëlle FARCHY, 2007
- ✓ Yorick Cool, Philippe Laurent, Etienne Montero, Hakim Haouideg, Collectif, Les logiciels libres face au droit, ed. Bruylant, 2005

Thank you !



LINAGORA

27 rue de Berri
75008 PARIS

Tél. : 01 58 18 68 28

Fax : 01 58 18 68 29

*Ensemble,
réussissons
les grands projets du Libre*