

GPL v3 : Warranties and Liability

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Introduction

- ▼ Principle: exclusion of warranties and liabilities
- ▼ Consideration for the chosen model and ensurance of its development
- ▼ Questions raised:
 - ▼ Is this valid under French law?
 - ▼ What are the consequences for the free software users?



GPLv3: is the exclusion of warranties and liability valid under French law?



Legal warranties under French law

- ▼ Warranty against hidden defects
 - ▼ Art.1641 and seq. / Art. 1721 French civil code
 - ▼ Art. 211-1 and seq. French consumer code
- ▼ Conformity warranty
 - ▼ Art. 1604 French civil code
 - ▼ Art. 211-4 French consumer code
- ▼ Infringement warranty
 - ▼ Art.1626 and seq. French civil code
 - ▼ Art.1719-3 French civil code



Hidden defects / Conformity warranties

- ▼ As a principle, hidden defects warranty may be excluded only between professionals of the same speciality.
- ▼ As a principle, conformity warranty may be limited under the same restrictions than the contractual liability
- ▼ In any case, such limitations / exclusions cannot be enforced against consumers.



Infringement warranty

- ▼ Limitation / exclusions may be valid :
 - ▼ Except if the infringement is due to its own behaviour (!)
 - ▼ In any case, the reimbursement of the price is due.



Limitation/ Exclusion of liability

- ▼ Such limitations / exclusions are valid, except in the following cases:
 - ▼ Tort liability
 - ▼ Wilfull misconduct
 - ▼ Gross negligence
 - ▼ Breach of an essential obligation



GPLv3: what are the consequences for the software users ?



Free software v. Proprietary software (1)

- ▼ Proprietary software licences include several sort of provisions which aim at limiting or excluding software publishers warranties and liability
- ▼ Conformity warranty / Hidden defects warranty
 - ▼ Objective of the customer:
 - ▼ Correction of the non-conformity / bugs
 - ▼ Reimbursement of the licence fee or a reduction of the price
- ▼ Infringement warranties



Free software v. Proprietary software (2)

- ▼ No case law in France on these questions
- ▼ The only difference: one contact (the software publisher) or multiple contacts (the community, service providers...)
- ▼ Some risks exist, as in the proprietary software sphere, they are different, but they can be managed.



Any questions?

Thank You

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