



Legal issues in  
free and open  
source software:

## Licenses of Intellectual Property Rights

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# scope of this presentation

raise awareness of  
legal issues  
relating to distribution of  
free and open source  
software

## product examples

- workstation and server products on which Linux is offered
- print server appliance
- digital entertainment center
- trusted Linux

economics

drives software  
availability

which leads to a  
licensing challenge

software has  
zero marginal cost

the web  
provides a low cost  
distribution mechanism

low cost tools (hardware  
and software) for  
development of software  
are widely available

economics

drives software  
availability

which leads to a  
licensing challenge

a great deal of useful software  
is readily available on the  
web

much of this software is  
available for no-fee

much of this software is  
suitable for use in products

some of this software is called  
“free software” or “open  
source software”

economics

drives software  
availability

which leads to a  
licensing challenge

Engineers are routinely  
making licensing decisions  
that were previously made  
by procurement specialists.

you need a license

You may not distribute any software without a license from the owner of that software.

## public domain confusion

Public Domain is a very misunderstood concept.

The fact that a piece of software may be readily available for free does not mean that the software is in the public domain.

With very rare exception, free and open source software is not in the public domain.

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is NOT in the  
public domain

the copyright is owned by  
the author

e.g., the Linux kernel includes  
code owned by hundreds of  
contributors

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permission is required in  
order to do those things that  
are the exclusive rights of  
the copyright owner

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assigned the copyright interest to  
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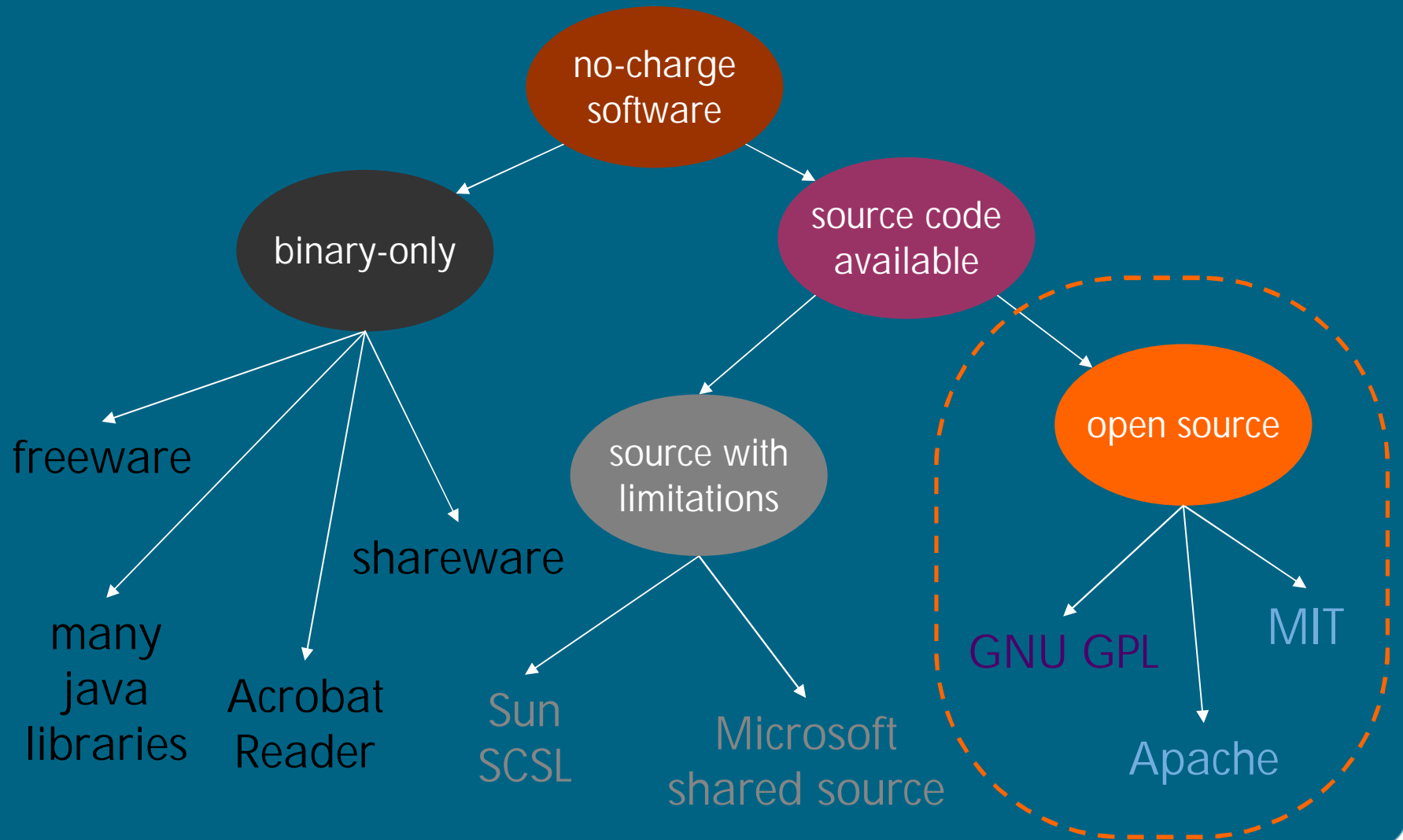
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many licenses

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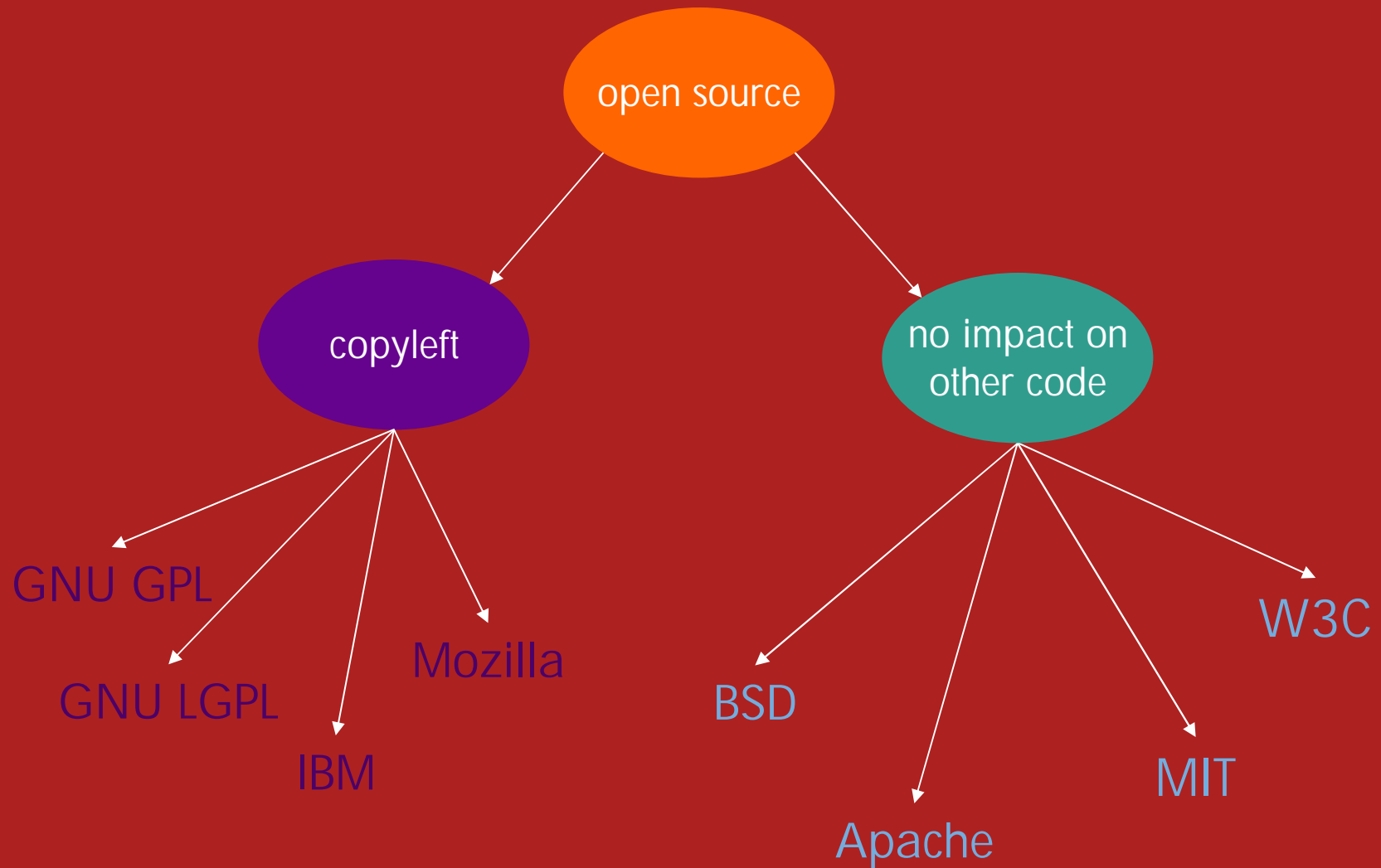
each license may be very  
simple (such as the MIT  
license)

but you still need to have a  
license for every piece of  
software

# open source is not the only no-charge software



# types of open source licenses



## "open source" definition

redistribution is permitted  
without requiring a fee

source code is available  
and may be redistributed

derived works are  
permitted and may be  
redistributed

[www.opensource.org](http://www.opensource.org)  
for more details

## open source license operational characteristics

- negotiation with the (many) copyright owners is not typically practical
- license terms flow with the code
- usually no 'accept' button; not 'executed'
- acceptance of the terms is signified by acts for which the copyright owner's permission is required, such as copying and distribution
- one who distributes is either bound by the terms or is a copyright infringer

you need to fulfill  
every obligation in  
every license

To understand the obligations, it is necessary to refer to the specific licenses in each case.

examples of obligations:

- maintain copyright notices and copy of license
- acknowledgement of the original author
- making source code available
- non-assertion of patents

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source code  
availability

how?

(a) include source code with the product, or

(b) include an offer to ship a copy of the source code

what?

complete source to build all binaries distributed under the GPL, whether modified or not

to whom?

to those to whom binaries are distributed

## GPL scope

when are two  
pieces of software  
“separate works”?

- consider the relationship between the two pieces of software
- pay particular attention to the interface between them
- is the interaction between them of the character of interaction between separate programs?

## GPL scope

when are two  
pieces of software  
“separate works”?

Linux kernel  
modules

- legal considerations
- business considerations
- relatively quiet for last two years; now a hotter topic.

## some additional requirements when distributing software licensed under the GPL

- GPL requires notice of availability of source code (if not included as part of the product).
- GPL requires notice of its terms.
- GPL does not permit an end user license to impose additional terms for GPL'd software:
  - Cannot require confidentiality.
  - Cannot preclude customer from redistributing the GPL'd software.

# GPL myths

myth: must give source code to everyone

reality: under GPL, the obligation is to the binary distributees; but, cannot prevent redistribution to others; no source availability obligation at all for MIT and BSD

myth: cannot charge for open source software

reality: can charge all that the market will bear; but, cannot prevent distributees from charging less or giving it away for free

myth: software combined with GPL-licensed software becomes licensed under the GPL

reality: software improperly combined with GPL-licensed software results in infringement of the GPL-licensed software author's copyright

# GNU GPL descendents: Lesser General Public License

- previously known as the GNU Library General Public License
- does not apply to all libraries
- linking GPL-licensed library code into a program would require that the program be distributed under GPL terms
- LGPL is designed to permit GPL-like terms to apply to a library, while permitting that library to be used with proprietary code

# GNU GPL descendents: Mozilla, IBM

the copyleft provisions draw the line in places different from the GPL:

GPL → work/program

Mozilla → source file boundaries

IBM → modules

warning: Mozilla version 1.1 and IBM PL include very broad patent license termination provisions; see next slide

# risks

- support: no assurance of support from the developer
- consumer and IP warranties/indemnification: “AS IS” from the developer; limited knowledge about who wrote the code
- copyleft licensing issues: in designing products, take care to keep components subject to a copyleft license appropriately separate from proprietary components
- ill-conceived give-away: an excess of enthusiasm for open source processes can lead to decisions to release company software under an open source license without full consideration of rights lost

free give-aways  
are not zero risk

If software infringes  
someone's IP rights,  
then you can be liable for  
infringement  
even if you receive no  
payment for the software.

# considering open source release of software that implements a patent

The fact that you have filed a patent application for a technique embodied in software to be released under an open source license does not fundamentally change the nature of your decision-making process as to whether to release the code under an open source license.

However,

- the presence of a patentable invention may indicate that the technology is towards the 'distinctive' end of the spectrum, suggesting careful consideration of the rights that will be given up when an open source implementation is released, and
- the adverse impact on the value of the patent rights should be considered.

action:

determine the  
impact on your  
code of  
third-party licenses  
(copyleft analysis )

- Some open source licenses require that you distribute your own 'related' software under open source terms.
- The meaning of 'related' depends on the particular open source license.
- Thus, in order to fulfill the requirements of the license for the third party software, it may be necessary to apply open source license terms to related your software, including making your source code available.
- Examples of such licenses:
  - GNU GPL
  - GNU LGPL,
  - Mozilla Public License
  - IBM Public License

action:

fulfill all  
requirements of the  
third-party licenses

for example:

- acknowledgements
- include copyright notice and license text with product
- provide for source code availability
- incorporate the 3rd party license requirements into end-user licensing materials

action:

when contracting  
for software to be  
developed for you,

assure that any  
open source  
components are  
identified

Open source software can be a source of misunderstanding between you and those with whom you contract to provide software to you.

The contractor not think to bring it to your attention, possibly because the contractor confuses open source with the public domain.



**i n v e n t**