



# Software IP and Licensing

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# Quick intro to IP

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- Divided in 4 main parts
  - Copyright: the right to copy a work
  - Patent: the right to use/recreate/manufacture an invention
  - Trademark: the right to use a word, phrase, sound
  - Trade secret: you don't tell anybody, nobody should know



# Some special cases:

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- Integrated Circuit Topography Act in Canada



# Copyright

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- Like literature and music, software is protected primarily by copyright law
  - It is a **literary work**
- What is copyright:
  - It covers the **expression** of an idea
  - Gives exclusive rights to the owner



# Copyright...

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- Copyright expires after:
  - 50 years in the case of a company
  - 50 years after death of person
- Who owns it:
  - It depends on contract



# Programs as literary art:

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- Apple Computer Inc vs Franklin Computer Corp
  - “Under the law, two primary requirements must be satisfied in order for a work to constitute copyrightable subject matter---it must be an “original wor[k] of authorship” and must be “fixed in [a] tangible medium of expression.” 17 U.S.C. § 102(a).”
  - “Literary works” are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.



# Copyright...

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- When its term expires, a work goes into public domain
- Gives its owner an “exclusive right” to:
  - to make and sell copies of the work (including, typically, electronic copies)
  - to import or export the work
  - to make derivative works
  - to publicly perform/display the work
  - to sell or assign these rights to others



# Copyright law is unique to each country

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- But it is founded in common grounds (Berne Convention)
- Canadian Copyright Act (1985)



# Patents

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- Protect inventions
- Give a monopoly to the creator for 20 years



# Trademarks

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- It is a distinctive sign:
  - Name, logo, symbol, design, picture...
  - In some cases: smell, taste, moving images, texture...
- It is used by a company to identify itself or its “wares”
- Some F/OSS projects had trademark problems



# Licenses

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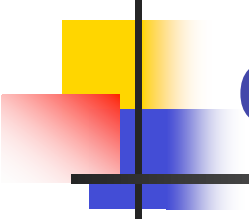
- Define a contract between 2 parties
- Shrink wrapped license:
  - A license that can only be accepted without any modification after “opening” the package
- They are used to limit rights beyond copyright law
- Are they enforceable? Yes and no
  - ProCD vs. Ziedenberg, Hill vs Gateway Inc.
  - Klocek vs Gateway Inc.



# Licenses

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- They allow the owner of the copyright to limit the rights of the user
  - To not allow certain tasks
  - To limit redistribution
  - To limit resale..
  - Limit warranty and merchantability: “as-is”



# Are Open source licenses enforceable?

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- GPL

- First visit to court: MySQL v Nusphere (2002)
  - Settled out of court
  - But the Judge saw “no reason” why it would not be valid
- Netfilter/IPTables v Sitecom (2004)
  - German court saw the GPL as a license that the defendant had accepted.



# Enforceable...

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“Defendant has infringed on the copyright of plaintiff by offering the software 'netfilter/iptables' for download and by advertising its distribution, without adhering to the license conditions of the GPL. Said actions would only be permissible if defendant had a license grant... This is independent of the questions whether the licensing conditions of the GPL have been effectively agreed upon between plaintiff and defendant or not. If the GPL were not agreed upon by the parties, defendant would notwithstanding lack the necessary rights to copy, distribute, and make the software 'netfilter/iptables' publicly available.