Innovation 2011

IP Management in Open Source & IT – Best Practices

Our Discussion Today

Open Source

- What is Open Source?
- Open Source Licenses Explained

IP Governance at Eclipse

- Looking Beyond the License
- Industry Collaboration

Open Source Software

- Software that is distributed with its source code (or an offer for it) under a license agreement that allows for its use and modification.
    1. "Permissive" or "Attribution" Open Source License Agreements

        E.g, BSD License
    2. "Copyleft" Open Source License Agreements

        E.g., EPL, MPL
- Distribution is not a requirement; licensees can use internally without obligations.
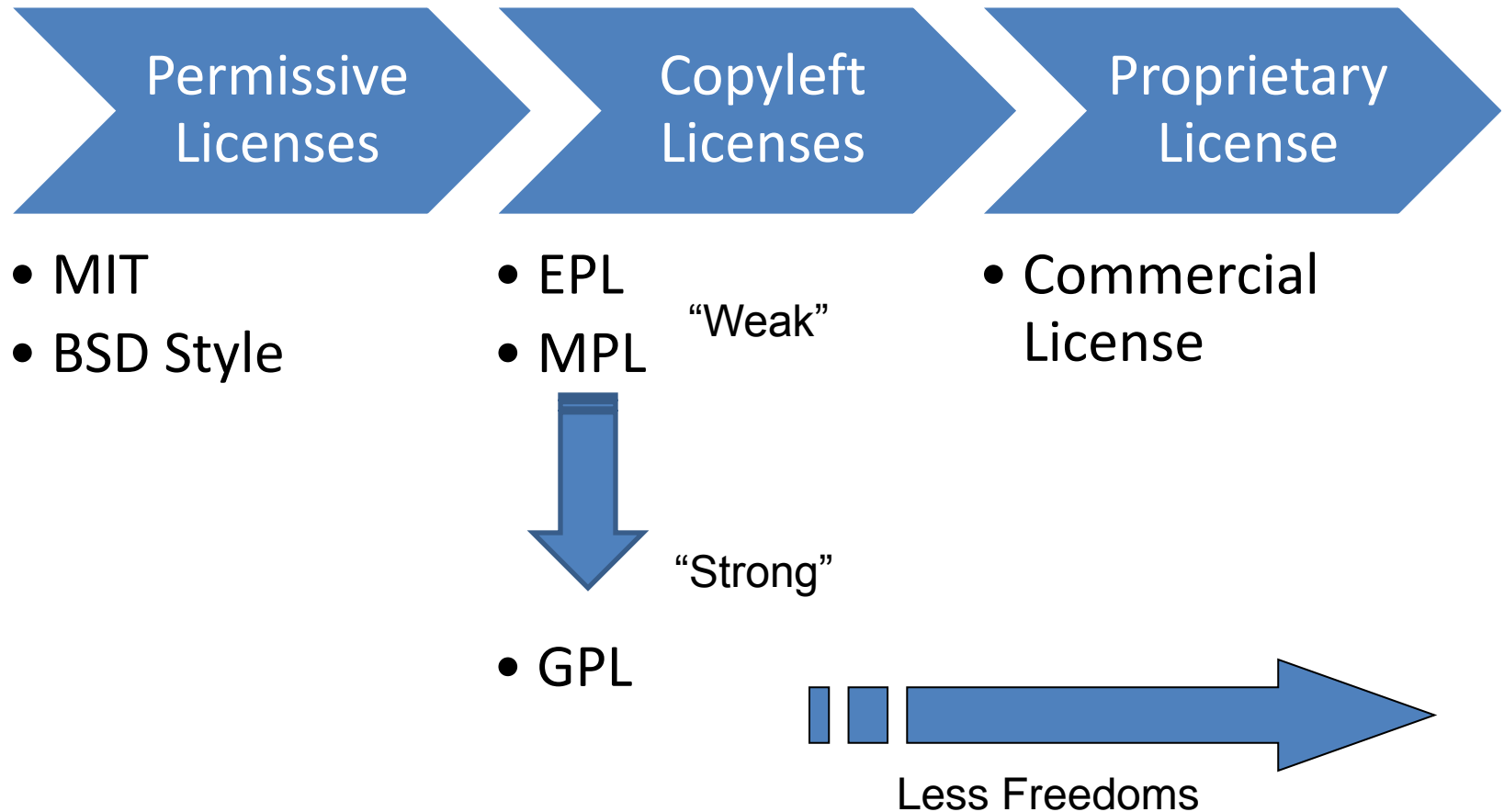
Open Source Initiative Cont…

Determined by the License Characteristics.

Defined by the Open Source Initiative

http://www.opensource.org/docs/osd

1. Free Redistribution
2. Source Code
3. Derived Works
4. Integrity of The Author's Source Code
5. No Discrimination Against Persons or Groups
6. No Discrimination Against Fields of Endeavor
7. Distribution of License
8. License Must Not Be Specific to a Product
9. License Must Not Restrict Other Software
10. License Must Be Technology-Neutral

The License Spectrum

Permissive Licenses	Copyleft Licenses	Proprietary License

- MIT
- BSD Style

- EPL
- MPL

"Weak"

"Strong"

- GPL

- Commercial License

Less Freedoms

"Permissive" Licenses

- "Permissive" or "Non-Copyleft" Free software comes from the author with permission to redistribute and modify, and <u>add additional restrictions</u> to the license terms.

  - A subsequent party can modify the non-copyleft free program and distribute the modified program as a <u>proprietary</u> software product, without making the source code available to others on the same terms.

  - E.g., BSD License

"Copyleft" Licenses

- *Copyleft* requires all modified versions of the program to be provided under the same license as the original software was obtained.

- The impact of copyleft varies from license to license:
  - Under the Eclipse Public License (EPL), the copyleft requirement only applies to that which is in the same module as the EPL code or that which is otherwise a "derivative work" of the EPL code as defined by copyright law
  - Under the GPL 2.1, merely "linking" GPL code with other code may require that the other code (and the combination) be licensed under the GPL.

- The EPL is a weak copyleft license and by design commercially friendly.
  - Allows for commercial re-licensing
  - Includes patent licenses

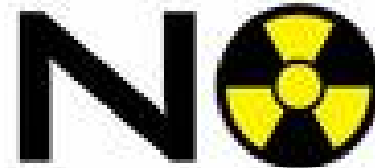# Does the License suit your use?
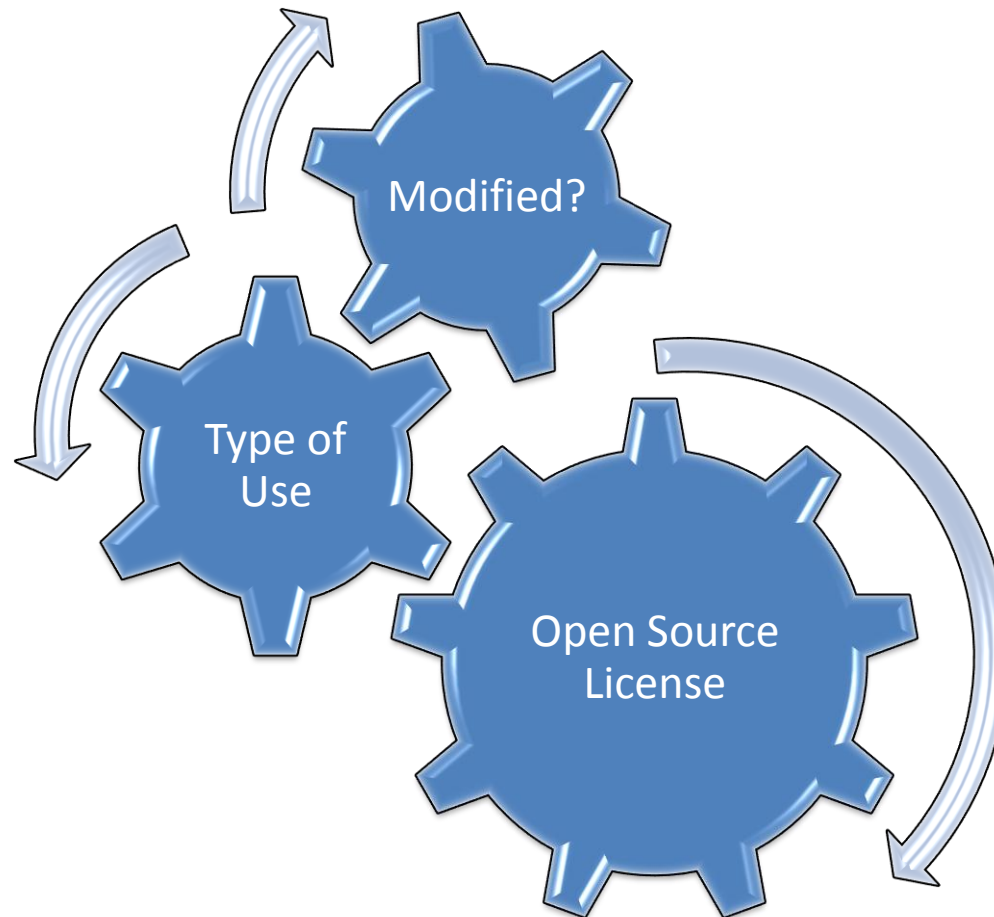
Type of Use

Internal Use

- Most open source licenses are well suited to internal use.

- Watch for Modifications to Popular Open Source Licenses

Type of Use

Distributed Use & Permissive License

- Generally do not pose any difficulties

Distributed Use & Copyleft License

- More careful review is required

  - How is the code structured?
  - Is the code modified?
  - Are there multiple license relationships

What about Risk?

- Risk is associated with the use of any software – open source or proprietary.

- While the concern about litigation exists, there has been very little litigation concerning open source to date.

- Open source continues to flourish.

- There are benefits to using it.

- Risk can be mitigated by doing your homework.

IP Governance at Eclipse

Code Originates from Three Sources:

1. Contributions from Eclipse Committers
2. Contributions from Contributors
3. Contributions from third party sources (e.g. another open source project)

Securing the Necessary Rights

Committer Contributions

- Legal Agreements are entered into to secure the necessary rights to have the code included in Eclipse.
    - Member Committer Agreement
    - Individual Committer Agreement
    - If the Individual Committer is Employed – An Employer Consent Form
- Through these Agreements, the Committer agrees that the Project License governs the code submitted by the Committer.

Securing the Necessary Rights

Contributor Contributions

- All content must be submitted through any of the channels existing on the Eclipse Foundation website such as, the Bugzilla bug reporting system.

- This material is licensed to others under the terms of the Eclipse Foundation Terms of Use.

- The Eclipse Foundation Terms of Use define the license terms that apply to any intellectual property submitted to the Eclipse Foundation website.

  - Modifications to EPL code are governed by the EPL
  - Modifications to code governed by another license are governed by that other license and the EPL.

Securing the Necessary Rights

Contributor Contributions continued…

- For all other contributions…
  - "you grant (or warrant that the owner of such rights has expressly granted) the Eclipse Foundation, the Members and the users of this Web-site a worldwide, unrestricted, royalty free, fully paid up, irrevocable, perpetual, non-exclusive license to use, make, reproduce, prepare derivative works of, publicly display, publicly perform, transmit, sell, distribute, sublicense or otherwise transfer such Materials, and/or derivative works thereof, and authorize third parties to do any, some or all of the foregoing including, but not limited to, sublicensing others to do any some or all of the foregoing indefinitely."
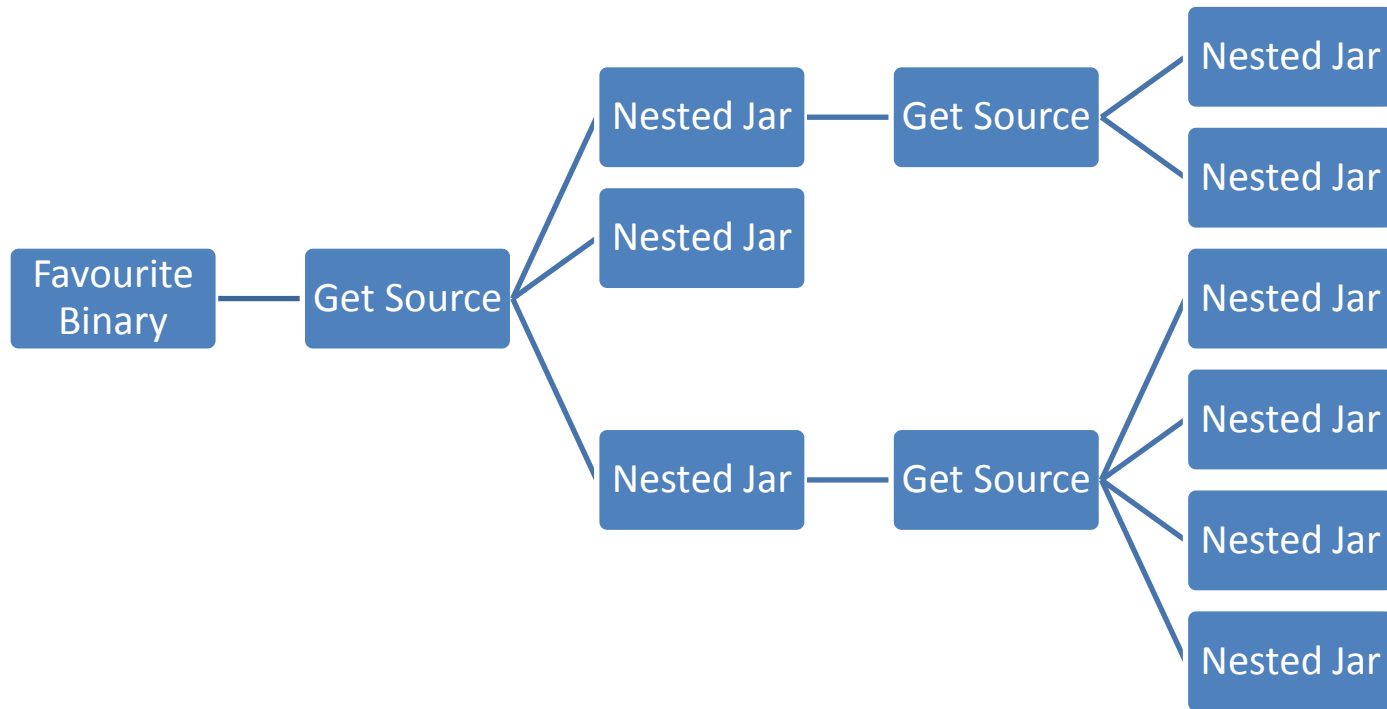
Third Party Contributions

- Third party contributions such as code originating from another open source project (e.g. www.apache.org) are licensed under the license terms that apply to that project.

- Eclipse completes due diligence on each of these packages.

Third Party Packages

Eclipse Due Diligence

- The components that are identified as needed are submitted for review.

- Each component is examined from the standpoint of:
  1. Provenance
  2. License Suitability

- Patent searches are not done.

- We use tools to help us

How is Provenance Managed

Who wrote this stuff and how did they agree to the license?

License Suitability

Consistency with Intended Use

Objectionable Terms

Terms that Present Potential Difficulties for Downstream Consumers

Legal Incompatibility

We Use Tools to Help Us

- The Eclipse Foundation uses tools to assist with our review.

  – Keyword search tools

  – Code print matching tools

Industry Collaboration

- IP Governance, together with a well defined Development Process and reliable infrastructure provides the ideal environment for industry collaboration.

- Industry Working Groups at Eclipse facilitate collaboration that extends beyond individual Projects to meet a particular industry need.