



Open Source Governance: Recognizing & Dealing with the Unique Risks Associated with Free Software

Virginia Badenhope, Associate
Smithline Jha LLP

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Developing an Open Source Policy

Step 1: Categorize the Licenses

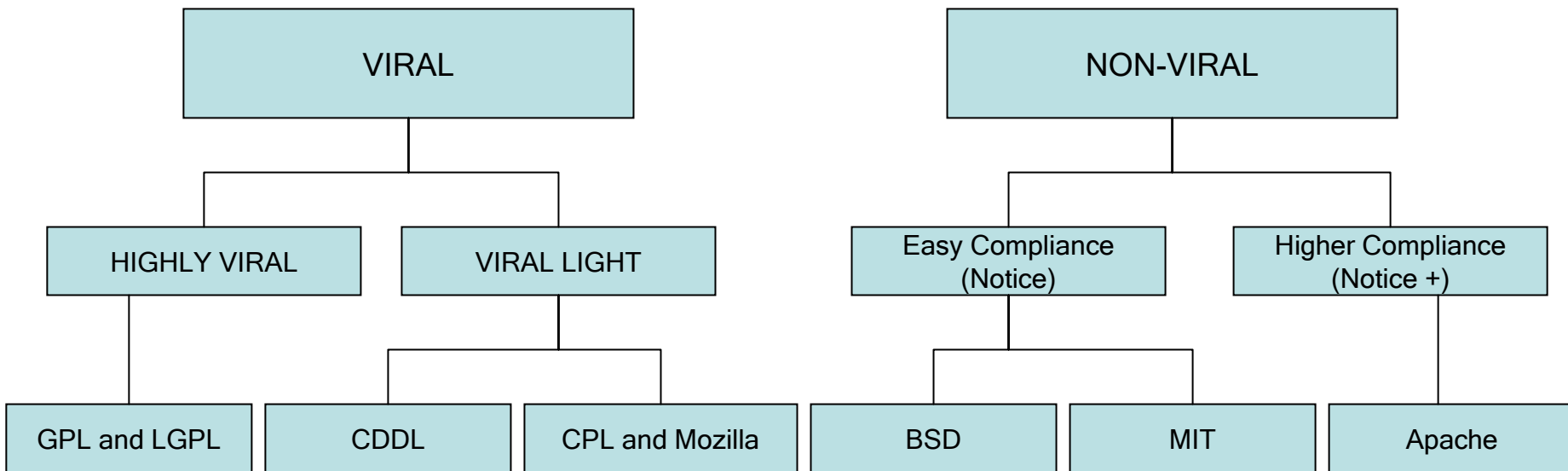
Step 2: Create Usage Rules

Step 3: Establish an Approval and Compliance Process

Step 4: What about Contributing Back to Open Source Projects?

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Step 1: Categorize the Licenses



Note: The terminology used in this diagram may be politically-loaded. No offense is intended.

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Step 1: The Matrix - Organize the Licenses in Accordance with your Categories


Name of License	RIGHTS SPECIFIED IN LICENSE GRANT			CONDITIONS FOR DISTRIBUTION						
	Copy	Modify ⁽¹⁾	Distribute ⁽²⁾	Must Include Copyright Notice	Must Include Copy of License	Must Include List of Conditions	Must Include Disclaimer of Warranties and Liability	Must Make Original Code Available	Must Distribute Source Code of Your Modifications	May Be Required to Distribute Source Code of Your Larger Proprietary Program
										"Viral"
ACME Labs Freeware License	implied	Yes	Yes	Yes	No	Yes	Yes	No	No	
Affero General Public License Version 1 (variation of GPLv2) 	Yes	Yes	Yes	Yes	Yes			Yes	Yes	
Alloy Look&Feel 	Yes 	Not Specified	Yes 	Yes	No	No	No	N/A	No	
ANTLR 2 License	Yes	Yes	Yes 	No	No	No	No	No	No	
ANTLR 3 License (BSD style)	implied	Yes	Yes	Yes	No	Yes	Yes	No	No	
Apache License Version 1.1	implied	Yes	Yes 	Yes	No	Yes	Yes	No	No	
Apache License Version 2.0 (January 2004)	Yes	Yes 	Yes	Yes	Yes			Yes	No	
Artistic License (Perl) (08/15/97)	Yes	Yes 	Yes 	Yes	No	Yes	Yes	Yes	Yes	
Australian Public Licence B Version 1-1	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	
Berkeley Software Distribution (BSD) License	implied	Yes	Yes	Yes	No	Yes	Yes	No	No	
Boost Software License (Version 1.0)(08/17/03)	Yes	Yes	Yes	Yes	Yes			No	No	

OPEN SOURCE LICENSE MATRIX LEGEND

(1) **“Modify”** means make changes to the source code version of the software covered by the open source license.

(2) **“Distribute”** means distribute the software covered by the open source license either alone or as embedded in your application. If the “Modify” column is marked “Yes,” the software covered by the open source license may be distributed in its modified form. If the “Modify” column is marked “No,” the software covered by the open source license may only be distributed in unmodified form. If distribution is allowed, you must comply with the application “Conditions for Distribution” set forth in the matrix.

 Making code accessible to third parties through a network (such as hosted or ASP services over the Internet) is treated as a form of distribution.

 License applies to binary code only.

 **Additional conditions apply. Careful review of full license required.**

 **CAUTION: If you are including the open source code in your proprietary program, you may be required to release the source code to the entire program.**

 **EXTREME CAUTION: If you are including the open source code (modified or unmodified) in your proprietary program, the default is that you must release the source code to the entire program.**

 **DO NOT PROCEED without careful analysis: Using code under this license could affect your ability to enforce your software patents. This license also imposes a number of special restrictions and obligations, including with respect to DRM technology and the use of code in consumer devices.**

Important Note regarding Open Source Guidance: Please be aware that our analysis on open source issues depends on the accuracy of the information that you provide us with respect to your use of the particular software component (e.g. whether you modify, distribute, or incorporate the component with your own product). Also, please be aware that, since there is very little (or no) binding legal authority regarding the interpretation, validity, or enforceability of most open source licenses, our analysis is based on our plain reading of the applicable licenses and what we believe to be the commonly held industry interpretation. This analysis may not be consistent with the interpretation of the licensor or any court. Finally, you should understand that using any type of open source in a proprietary product is inherently risky, no matter how widespread the practice. In almost all cases you will not know the true provenance of the code (meaning you have no real assurance that the code does not infringe the copyright or patent of any third-party) and furthermore the code comes without any warranty or indemnity; this means that you will be solely liable for any legal problems arising from use of the code in your products. If you have any question regarding this advice, please do not hesitate to contact us.

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Step 2: Create Usage Rules

Create usage rules for each license category. Here is an example:

OPEN SOURCE LICENSE USAGE RULES (EXAMPLE ONLY)	
Non-Viral (Easy Compliance)	Approved Usage Case: All (as stated below) <ol style="list-style-type: none">1. Internal2. Embed in or ship with product3. Host/ASP4. May be modified
	Approval Steps: <ol style="list-style-type: none">1. User submits (a) name of component, (b) license name and version number and (c) URL of location from which the component will be downloaded, to Legal along with statement of proposed use (1-4 above). If code will be embedded in product, user must also submit plan for complying with license obligations (e.g., inclusion of license text in product documentation and copyright notice in product "about" box). For an example of such a submission form, see Step 3 below.2. Component license categorization confirmed by Legal.3. License obligations compliance method confirmed by Legal, if applicable.
Non-Viral (Higher Compliance)	Approved Usage Case: All (same as above)
	Approval Steps: same as above

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Step 3: Create an Approval and Compliance Process

Start by requiring developers to prepare a submission form. After you receive the completed form, you can apply the rules you've established. Here's a sample submission form:

OPEN SOURCE USAGE REQUEST FORM	
Name of Component:	
Name of open source license and version number (if any):	
URL for the site from which the component will be downloaded:	
Is a commercial license available for this component?	<input type="checkbox"/> Yes. <input type="checkbox"/> No Notes:
Usage:	<input type="checkbox"/> Internal <input type="checkbox"/> Embed in or ship with product <input type="checkbox"/> Host/ASP <input type="checkbox"/> Modify Check all that may possibly apply to use of this component. Notes:
If Modifying, please explain:	
If Embedding in or shipping with product, please explain:	
Compliance - how do you intend to comply with any compliance requirements (e.g. placing required copyright notices in the documentation)?	
Anything else we should know?	

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Step 4: What About Contributions Back to Open Source Projects?

- Understand the difference between contributing code back to the project (which is always optional) v. complying with Viral disclosure obligations
- Contributing requires entry into a separate legal agreement with the project owner
- Contribution agreements vary, some require assignment of IP rights
- Require legal review of contributions in every case

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Questions?

Virginia Badenhope
Smithline Jha LLP
(415) 953-5119
virginia@smithlinejha.com
www.smithlinejha.com

