OPEN SOURCE SOFTWARE AND COPYRIGHT INTERFACE

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Introduction

With the growing popularity of open source the software industry scenario is totally changed in recent years. Two major models of software licensing is open source and commercial software is the most discussed topic. Most of the developing countries are facing challenges namely-

a) Tackling with privacy issues
b) To have a greater control over the software
c) Dealing with policy aspects   and how to develop a successful domestic software industry

Status of Software's under present Copyright Regime

The software   is protected as the subject matter of copyright. By virtue of Art.4 of the wipo copyright treaty, 1996," computer programs are protected as **literary works** within the meaning of Art. 2 of the Berne convention. Thus under copyright act, the source code and object code of the computer programs are under protection. The owner of computer programs has exclusive right of reproduction, distribution, adaptation, modification over the program and the protection is available for 60 years.

Doctrine of "first Saale / Exhaustion "

The principle says that, IP holders lose their rights to control the resale of protected goods, once the relevant good is put on sale for the first time by him .But when we take the case of

computer programs it can be observed that they fall under the heading of literary works, the doctrine of first sale is not restricting the right of distribution rather **Doctrine of exhaustion**, never sell the software but distributer them by granting licenses to the users. The user is denied access to the source code of the program.

"Open source"

The free/open software model makes source code available to users, who can change the software to more closely to their own requirements. Open source software's give users the freedom to run, copy, distribute, study, change and improve the software's. Copy left uses copyright law, to use, modify, redistribute. Under this software is first copyrighted and they distribute under such license Open source license must comply with following criteria[1]:

- Free distribution
- Source code
- Derived works
- Integrity of the Author's source code
- No discrimination against persons or group
- No discrimination against fields of endeavor.
- License must not restrict other software
- License must be technology – Neutral.

Advantages of OSS.

OSS promotes freedom but that does not mean that it comes free. OSS software is available at a very low price at times free of cost. For instance, open office; MS office comes for free of cost[2]. The open source license requires the further users who modify or improve the software to provide the copy of license with every copy of the software distributed. There is a continuous product development by open source community. The contributors are free to incorporate ideas and modify the product. Further open source software is built to open standards, will be interoperable with other open standard system.

Legal validity of OSS

Fear uncertainty Doubt: The growing popularity for OSS have brought the wrath of the proprietary software industry on it thus creating a uncertainty in the mind of the user regarding the legal validity of OSS.[3]

In the case of ***SCO v Daimler Chrysler*** main allegation raised that DC failed to certify as requested by SCO , DC is in compliance with certain use restrictions in licenses to the UNIX OS over which SCO claims ownership . DC claimed that it had supplied certification and no longer uses the licensed software. The case was dismissed.

In the case ***Jacobsen v. Katzer***[4] , the defendant company had copied certain decoder pro files developed by the plaintiff under OSS license for his java model Railroad Interface and had distributed them as part of their proprietary product without complying with the condition in the Artistic license . Thus US court upholding the validity of an Open Source license held that,

 "Copyright holders who engage in Open source Licensing have the right to control the modification and distribution of Copyrighted material.

In the case of ***Gilliam v. ABC***[5]   an unauthorized editing of the underlying work, if proven, would constitute infringement of copyright in that work similar to any other use of a work.

 In the case of ***SCO v. IBM***   where SCO claimed that IBM   illegally incorporated SCO's proprietary UNIX code into the open- source Linux operating system , and thus every Linux distributor, developer and user would become copyright infringers if do not pay a licensing fee. The court ultimately determined that 326 lines of code in the Linux were infringing.

Open Source developers copyright their products; they remain the copyright owners throughout the life of the copyright, and apply the Open Source license to their created code. However, since Open Source software is often generated through the work of many programmers, if programmers develop software during the scope of employment--meaning that the programmer was hired to work on the specific source code(s)--the employer would be the owner of the code with rights to grant the license. If programmers work on Open Source software in their own homes or on their own time, then generally the rights to that software remain with the developer. However, programmers may be under an employment agreement which would prohibit them from contributing source code to an Open Source project or applying Open Source licenses to all code that they produce during their employment. Alternatively, many large companies, such as HP and IBM actively support Open Source development, both as a

way to align with technology, and for marketing purposes .The best way to deal with these issues is by having a formal policy in place that clearly states a company's Open Source policy.

Conclusion

Ever since the mid-1990s, the Open Source method has played an increasingly important role in the development of software, the Internet, and operating systems. Although the concept behind Open Source and U.S. copyright laws are to benefit society as a whole, it is without a doubt that the perception of Open Source as "free" software between programmers will continue to play against the legal battles of ownership rights and licensing in our legal systems. That is why it is imperative for programmers to determine whether they have the right to contribute to Open Source programs and for copyright owners to determine which license they wish their work to be governed under.[1]

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[1] *See* Open Source Initiative, http://opensource.org/doc/OSD,(Last date of visit 14th June, 2017at 10 AM).

[2] *See* http://www.openoffice.org/., (Last visited on 14th June, 2017 at 11 am) .

[3]*See*, Andres Guadamuz Gonzalez, 'legal challenge to open source licenses', available at http://www.era-test.lib.ed.uk/bitstream/legalchallrengesopensource.pdf,(last visited on 14th June, 2017. At 10.30 am) .

[4] 535F.3d1373 (Fed.Cir.2008).

[5] 538 F.2d 14, 21(2d Cir. 1976).