



EVERYTHING MATTERS

# Recent trends in OSS licensing

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## 2. GPL validated in court and in the field

- French case of 16 September 2009
  - Microsoft donation of software in July 2009
  - Cisco settlement
  - Jacobsen v. Katzer
- ➔ in general, growing amount of evidence that open source licenses are valid and enforceable

Nevertheless, almost all cases deal only with:

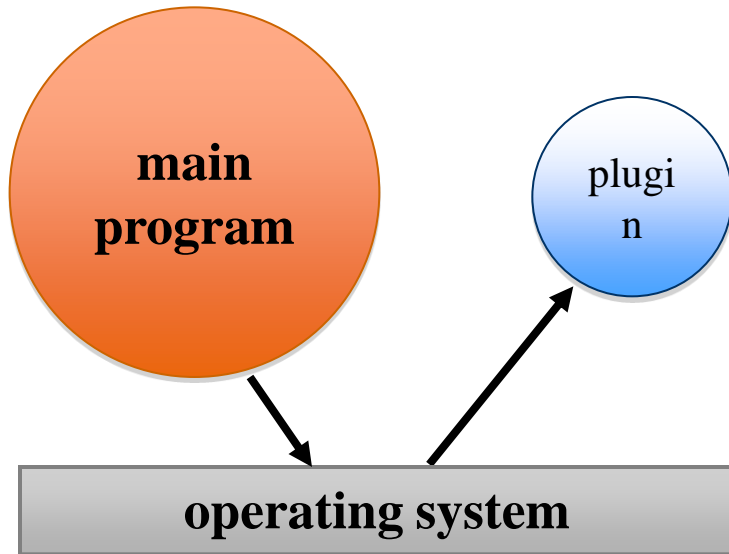
- GNU General Public License (GPL)
- high-level issues (enforceability, source code distribution obligation, attribution obligation)

# Questions remain

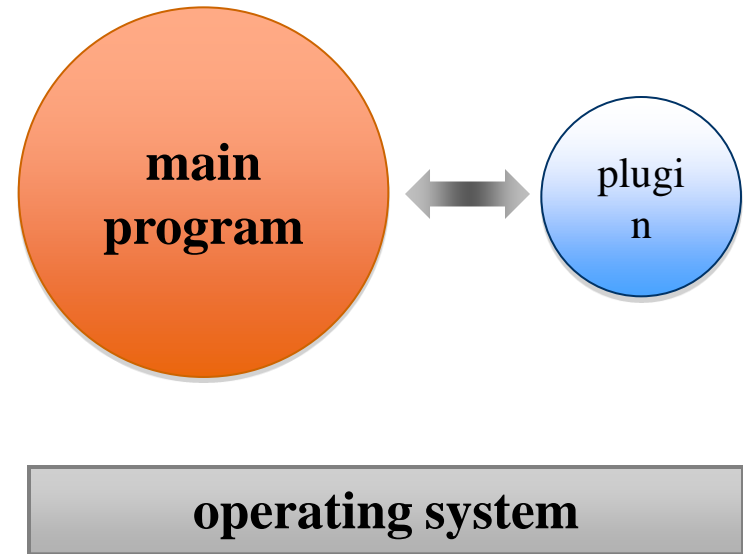
- Liability claims due to use of open source software?
- Inadvertent “contamination” horror stories?
- Scope and interpretation of “derivative works”?
- Localisation of US legal concepts?
- Validity of limitations of liability / warrantt outside US?
- Dynamic linking and the GPL?
- Applicability to static content (cf. WordPress themes)?
- Legal value of the interpretation of the Free Software Foundation?

# Example: dynamic linking with GPL plugins

## 1. Fork and exec



## 2. Dynamic plugin



*derivative work?*

# Reaction: unconfirmed legal assumptions

- Open source developer community creates its own legal assumptions / common understanding of the most relevant legal questions, due to
  - lack of in-depth case law
  - technicality of the subject
- Value in court of this “common understanding”?
- Challenge for IT lawyers
  - clarifying issues in legal doctrine
  - avoiding myths (*e.g.*, Java LGPL linking issue)

### 3. Slow but increasing uptake of new licenses

- License proliferation issue is considered a serious issue in the open source community
- State of new FSF-licenses:
  - AGPL
  - GPL v3
- Relevance of the EUPL

# Affero GNU General Public License (AGPL)

- Based on GPL v2 / v3
- Closes the “**ASP loophole**”
  - running software on a server does not qualify as “distribution” under the GPL
  - ASP loophole is not confirmed in court, but is explicitly countered by the AGPL (and the EUPL)
  - future model for cloud computing & web services software?
- AGPL is not welcomed by every developer

# European Union Public Licence (EURL)

- “European answer” to GPL v2
- created by the European Commission
- resolves several (possible) legal issues, such as:
  - general enforceability
  - limitation of liability / exclusion of warranty
  - accorded rights
- available in 22 official languages, all with identical legal value
- closes the ASP loophole
- interesting, but limited use so far



# MPL version 2

- Currently alpha version
- Goal: "modernize, maintain & simplify"
- No major (scope) changes
- Examples:
  - choice of law & choice of court
  - patent termination clause
  - copyright terminology too US-specific
  - source code distribution obligations
  - compatibility with Apache v2



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