



What Does it Mean For Me?

Thursday
July 19, 2007



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GPLv3

Background

- GNU General Public License (GPL) is the most popular of all open source licenses
- Authored and maintained by the Free Software Foundation (FSF)
- The “GPL” is actually version 2 of the GPL
 - GPLv1 released in 1989
 - GPLv2 released in 1991
- GPLv2 has come to be viewed as
 - Ambiguous
 - Controversial
 - Outdated
- In early 2005 suggestions of new third version of the GPL began to emerge

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GPLv3

GPLv3 Timeline

- November 30, 2005 – Process document published by the FSF
- Four official interim public discussion drafts published prior to the final draft (three discussion drafts + the “last call” draft)
 - January 16, 2006 – 1st discussion draft released by the FSF
 - July 27, 2006 – 2nd discussion draft released by the FSF
 - March 28, 2007 – 3rd discussion draft released by the FSF
 - May 31, 2007 – “Last call” draft published
- June 29, 2007 – Final(ly) draft published

GPLv3

Drafting Process

- All drafts principally architected and authored by the FSF
- Supported by a formalized FSF-led comment and review process
 - Four FSF-established official feedback and discussion groups
 - Group A – OSS projects
 - Group B – Large OSS vendors
 - Group C – Large OSS users and attorneys
 - Group D – OSS and other developers
 - Open public comment periods following each interim discussion draft (>15,000 comments received)
- Not unlike a legislative drafting process
 - Plenty of compromise
 - Some back-room dealing and arm-twisting
- Established legislative history
 - Language changes draft-to-draft
 - Additional license drafts released to the FSF discussion groups
 - Comments, statements and FAQs from the FSF
 - Minutes and notes from the official discussion groups

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GPLv3

Goals and Issues

- Stated goals
 - “Globalization”
 - Fewer ties to US-centric legal language
 - Reliance only on the terms of the GPLv3 and on local law
 - Anti-Circumvention
 - Address the anti-circumvention provisions of the DMCA
 - “Anti-Tivoization”
 - Stop “lockdown” by digital rights management (DRM)
 - Allow users to modify devices as the manufacturers can modify the devices
 - Software patent “aggression”
 - Deter the enforcement of software patents
 - Thwart deals similar to the Novell-Microsoft
- Additional Issues
 - The “ASP Loophole”
 - Compatibility with other OSS licenses (including even GPLv2)
 - Use of subcontractors
 - Termination

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GPLv3

Globalization

- Under GPLv2 several key boundaries are established:

0. The act of running the Program is not restricted. [. . .]

2. You may modify your copy or copies of the Program or any portion of it, thus forming a work based on the Program, [. . .]

You must cause any work that you distribute or publish, that in whole or in part contains or is derived from the Program or any part thereof, to be licensed as a whole at no charge to all third parties under the terms of this License.

If identifiable sections of that work are not derived from the Program, and can be reasonably considered in independent and separate works themselves, then this License, and its terms, do not apply to those sections [. . .].

- Terminology used is largely tied to US copyright law
 - Modifying to form a “work based on the Program” or a work that “is derived from” the Program
 - Distribute (or publish)
 - “Independent and separate works”
- Interpretation is thus based on US copyright law
- Also leaves many grey areas (even more so outside of the US)

GPLv3

Globalization

- Under GPLv3, similar key boundaries are established:

2. Basic Permissions.

[. . .]

This License explicitly affirms your unlimited permission to run the unmodified Program.

[. . .]

You may make, run and propagate covered works that you do not convey, without conditions so long as your license otherwise remains in force.

[. . .]

Conveying under any other circumstances is permitted solely under the conditions stated below.

- New terminology is used to establish these boundaries
 - Propagate
 - Convey
 - Covered works
- Terms are not specific to US law
- Instead, GPLv3 provides definitions

GPLv3

Globalization

- New terminology is defined within GPLv3

0. Definitions.

A "covered work" means either the unmodified Program or a work based on the Program.

To "modify" a work means to copy from or adapt all or part of the work in a fashion requiring copyright permission, other than the making of an exact copy.

To "propagate" a work means to do anything with it that, without permission, would make you directly or secondarily liable for infringement under applicable copyright law, except executing it on a computer or modifying a private copy. Propagation includes copying, distribution (with or without modification), making available to the public, and in some countries other activities as well.

To "convey" a work means any kind of propagation that enables other parties to make or receive copies. Mere interaction with a user through a computer network, with no transfer of a copy, is not conveying.

- Interpretation is still tied to applicable copyright law (not just US)
- Significant grey areas in interpretation (still) exist

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GPLv3

Globalization

- Conveying verbatim copies is covered by the license
- Treated similarly to GPLv2

4. Conveying Verbatim Copies.

You may convey verbatim copies of the Program's source code as you receive it, in any medium, provided that you conspicuously and appropriately publish on each copy an appropriate copyright notice; keep intact all notices stating that this License and any non-permissive terms added in accord with section 7 apply to the code; keep intact all notices of the absence of any warranty; and give all recipients a copy of this License along with the Program.

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GPLv3

Globalization

- Conveying a “work based on the Program” is also covered
- Requirements are similar to those in GPLv2

5. Conveying Modified Source Versions.

You may convey a work based on the Program, or the modifications to produce it from the Program, in the form of source code under the terms of section 4, provided that you also meet all of these conditions:

- a) The work must carry prominent notices stating that you modified it, and giving a relevant date.
- b) The work must carry prominent notices stating that it is released under this License [. . .].
- c) You must license the entire work, as a whole, under this License to anyone who comes into possession of a copy. [. . .]
- d) If the work has interactive user interfaces, each must display Appropriate Legal Notices; [. . .]

GPLv3

Globalization

- However, note how GPLv3 defines the boundary between a “work based on the Program” and an independent and separate work

5. Conveying Modified Source Versions.

[. . .]

A compilation of a covered work with other separate and independent works, which are not by their nature extensions of the covered work, and which are not combined with it such as to form a larger program, in or on a volume of a storage or distribution medium, is called an "aggregate" [. . .]. Inclusion of a covered work in an aggregate does not cause this License to apply to the other parts of the aggregate.

- Compare this with the corresponding language from GPLv2

2. [. . .] These requirements apply to the modified work as a whole. If identifiable sections of that work are not derived from the Program, and can be reasonably considered independent and separate works in themselves, then this License, and its terms, do not apply to those sections when you distribute them as separate works. [. . .] Thus, [. . .] the intent is to exercise the right to control the distribution of derivative or collective works based on the Program.

GPLv3

Anti-Circumvention Laws

- The Digital Millennium Copyright Act of 1998 (DMCA) implements Article 11 of the WIPO Copyright Treaty of 1996 in the US
- The DMCA provides specific legal protections against:
 - Circumvention of “effective” technological protection measures
 - Trafficking in tools that circumvent such protection measures
- GPLv3 specifically targets these protections

3. Protecting Users' Legal Rights From Anti-Circumvention Law.

No covered work shall be deemed part of an **effective technological measure** under **any applicable law** fulfilling obligations under article 11 of the WIPO copyright treaty adopted on 20 December 1996, or similar laws prohibiting or restricting circumvention of such measures.

When you convey a covered work, **you waive any legal power to forbid circumvention of technological measures** to the extent such circumvention is effected by exercising rights under this License with respect to the covered work, and you **disclaim any intention to limit operation or modification of the work as a means of enforcing**, against the work's users, your or third parties' **legal rights to forbid circumvention of technological measures**.



GPLv3

User Products (Anti-“Tivoization”)

- GPLv3 seeks to close a perceived loophole in GPLv2
 - Company sells a hardware product that runs on GPL’d software
 - Company makes modifications to the GPL’d software
 - Company must release the source code of their modifications to the GPL’d software
 - But, the company may also employ technological measures to prevent the installation of user-modified versions of the GPL’d software onto their hardware product
- Again, the resulting language represents a compromise
- In the end the language applies only to “User Products”

A "User Product" is either (1) a "consumer product", which means any tangible personal property which is normally used for personal, family, or household purposes, or (2) anything designed or sold for incorporation into a dwelling.

- FSF has stated that it assumes businesses will have market power to close this loophole without the aide of GPLv3

GPLv3

User Products (Anti-“Tivoization”)

- If the manufacturer can modify the software on their “User Product,” then users must also be able to install their own modifications

6. Conveying Non-Source Forms.

[. . .]

If you convey an object code work under this section in, or with, or specifically for use in, a User Product, and the conveying occurs as part of a transaction in which the right of possession and use of the User Product is transferred to the recipient in perpetuity or for a fixed term (regardless of how the transaction is characterized), the Corresponding Source conveyed under this section must be accompanied by the Installation Information. But this requirement does not apply if neither you nor any third party retains the ability to install modified object code on the User Product (for example, the work has been installed in ROM).

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User Products (Anti-“Tivoization”)

- While no longer tied directly to US law, the concept of a “User Product” does leave room for interpretation
- GPLv3 does attempt to narrow the definition

In determining whether a product is a consumer product, doubtful cases shall be resolved in favor of coverage. For a particular product received by a particular user, "*normally used*" refers to a *typical or common use of that class of product*, regardless of the status of the particular user or of the way in which the particular user actually uses, or expects or is expected to use, the product. A product is a consumer product *regardless of whether the product has substantial commercial, industrial or non-consumer uses*, unless such uses represent the only significant mode of use of the product.

- But, there will still be a need for an accepted interpretation of this language to emerge



GPLv3

ASP-Loophole

- GPLv3 originally set out to apply the requirements in GPLv2 regarding the release of works based on GPL'd software to ASPs as well as software vendors
- Significant pushback from Google (among others)
- Result is another compromise
- The definition of "convey" specifically excludes conveyance of functionality via a network without transfer of a copy

To "convey" a work means any kind of propagation that enables other parties to make or receive copies. Mere interaction with a user through a computer network, with no transfer of a copy, is not conveying.

GPLv3

ASP-Loophole

- But, GPLv3 does include an exception allowing for linking to code covered by a version of the GPL called the Affero GPL

13. Use with the Affero General Public License.

Notwithstanding any other provision of this License, *you have permission to link or combine any covered work with a work licensed under version 3 of the GNU Affero General Public License into a single combined work, and to convey the resulting work.*

The terms of this License will continue to apply to the part which is the covered work, but the special requirements of the GNU Affero General Public License, section 13, concerning interaction through a network will apply to the combination as such.

- Affero GPL is basically a version of the GPL allowing for a requirement that interaction with code through a network triggers the terms of the GPL

GPLv3

Software Patents

- GPLv2 recognized to include an implied patent license
- New restrictions in GPLv3 add express patent commitments
- First, on contributors to GPL'd software

11. Patents.

[. . .]

Each contributor grants you a non-exclusive, worldwide, royalty-free patent license under the contributor's essential patent claims, to make, use, sell, offer for sale, import and otherwise run, modify and propagate the contents of its contributor version.

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Software Patents

- Fairly straightforward definition of “contributor”

A "contributor" is a copyright holder who authorizes use under this License of the Program or a work on which the Program is based. The work thus licensed is called the contributor's "contributor version".

- Definition of “essential patent claims” borrows language commonly found in standards agreements

A contributor's "essential patent claims" are all patent claims owned or controlled by the contributor, whether already acquired or hereafter acquired, that would be infringed by some manner, permitted by this License, of making, using, or selling its contributor version, but do not include claims that would be infringed only as a consequence of further modification of the contributor version. For purposes of this definition, "control" includes the right to grant patent sublicenses in a manner consistent with the requirements of this License.

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GPLv3

Software Patents

- Also imposes obligations on distributors of GPL'd software

11. Patents.

[. . .]

If you convey a covered work, knowingly relying on a patent license, and the Corresponding Source of the work is not available for anyone to copy, free of charge and under the terms of this License, through a publicly available network server or other readily accessible means, then you must either (1) cause the Corresponding Source to be so available, or (2) arrange to deprive yourself of the benefit of the patent license for this particular work, or (3) arrange, in a manner consistent with the requirements of this License, to extend the patent license to downstream recipients.

[. . .]

If, pursuant to or in connection with a single transaction or arrangement, you convey, or propagate by procuring conveyance of, a covered work, and grant a patent license to some of the parties receiving the covered work authorizing them to use, propagate, modify or convey a specific copy of the covered work, then the patent license you grant is automatically extended to all recipients of the covered work and works based on it.

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Novell-Microsoft Clause

- November 7, 2006 - Novel announced a new agreement with Microsoft regarding Novell's SuSe Linux
- Full terms of the finally released in Novell SEC filings
- The deal involves three main parts:
 - Collaboration to increase the compatibility of Windows and Novell's SuSe Linux
 - Commitments to dedicate marketing and sales resources to promote joint solutions
 - Patent coverage for their respective customers, giving customers peace of mind regarding IP Infringement issues
- Patent indemnification made the agreement instantly controversial in the OSS community
- At the time, sent the FSF into "crisis mode"

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Novell-Microsoft Clause

- The result is a clause specifically targeting such deals

11. Patents.

[. . .]

A patent license is "discriminatory" if it does not include within the scope of its coverage, prohibits the exercise of, or is conditioned on the non-exercise of one or more of the rights that are specifically granted under this License. You may not convey a covered work if you are a party to an arrangement with a third party that is in the business of distributing software, under which you make payment to the third party based on the extent of your activity of conveying the work, and under which the third party grants, to any of the parties who would receive the covered work from you, a discriminatory patent license (a) in connection with copies of the covered work conveyed by you (or copies made from those copies), or (b) primarily for and in connection with specific products or compilations that contain the covered work, unless you entered into that arrangement, or that patent license was granted, prior to 28 March 2007.

- But grandfathering in the existing Novell-Microsoft deal

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Novell-Microsoft Clause

- Not so subtle attempt to stop companies who distribute OSS from making patent deals with other companies
- You are barred from distributing GPL'd software if you enter into an agreement with another company who also distributes software of any kind if:
 - you pay the other company
 - the deal mentions the GPLd software
 - you get a patent license
 - the patent license mentions the GPLd software
 - the patent license has more limited terms than the GPL license on the software
- Does not stop a vendor from providing indemnification, insurance or other similar coverage as to the vendor's own product
- Remains a controversial issue

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GPLv3

Termination

- Under GPLv2 termination for breach is automatic
- GPLv3 also assumes an automatic termination

8. Termination.

You may not propagate or modify a covered work except as expressly provided under this License. Any attempt otherwise to propagate or modify it is void, and will automatically terminate your rights under this License [. . .].

- But allows opportunities for reinstatement

However, if you cease all violation of this License, then your license from a particular copyright holder is reinstated (a) provisionally, unless and until the copyright holder explicitly and finally terminates your license, and (b) permanently, if the copyright holder fails to notify you of the violation by some reasonable means prior to 60 days after the cessation.

Moreover, your license from a particular copyright holder is reinstated permanently if the copyright holder notifies you of the violation by some reasonable means, this is the first time you have received notice of violation of this License (for any work) from that copyright holder, and you cure the violation prior to 30 days after your receipt of the notice.

GPLv3

Use of Subcontractors

- Under GPLv2 it was unclear whether providing GPL'd code to a subcontractor was to be treated as a "distribution"
- GPLv3 attempts to clarify this:

2. Basic Permissions.

[. . .]

You may convey covered works to others for the sole purpose of having them make modifications exclusively for you, or provide you with facilities for running those works, provided that you comply with the terms of this License in conveying all material for which you do not control copyright. Those thus making or running the covered works for you must do so exclusively on your behalf, under your direction and control, on terms that prohibit them from making any copies of your copyrighted material outside their relationship with you.

- Note that specific guidelines must be followed in establishing the relationship with the subcontractor

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GPLv3

Additional Permissions and Terms

- GPLv3 allows for licensors to include “additional permissions” and “additional terms” into GPLv3
 - “Additional permissions” are additional (permissive) terms making exceptions to the license
 - “Additional terms” are additional (non-permissive) terms adding one or more expressly listed conditions or limitations to the license
- GPLv3 forbids “further restrictions,” meaning additional (non-permissive) terms in addition to those expressly listed

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GPLv3

Additional Permissions

- Ability to add exceptions to the license
- Open to anyone having the power under copyright law to add them
- Can apply to all or part of a Program
- But, removable by downstream licensees

7. Additional Terms

"Additional permissions" are terms that supplement the terms of this License by making exceptions from one or more of its conditions. Additional permissions that are applicable to the entire Program shall be treated as though they were included in this License, to the extent that they are valid under applicable law. If additional permissions apply only to part of the Program, that part may be used separately under those permissions, but the entire Program remains governed by this License without regard to the additional permissions.

When you convey a copy of a covered work, you may at your option remove any additional permissions from that copy, or from any part of it. (Additional permissions may be written to require their own removal in certain cases when you modify the work.) You may place additional permissions on material, added by you to a covered work, for which you have or can give appropriate copyright permission.

GPLv3

Additional Terms

- Ability to add additional non-permissive terms, limitations and obligations to the license
- But only as expressly listed in Section 7

Notwithstanding any other provision of this License, for material you add to a covered work, you may (if authorized by the copyright holders of that material) supplement the terms of this License with terms:

- a) Disclaiming warranty or limiting liability differently from the terms of sections 15 and 16 of this License; or
- b) Requiring preservation of specified reasonable legal notices or author attributions [. . .]; or
- c) Prohibiting misrepresentation of the origin of that material [. . .]; or
- d) Limiting the use for publicity purposes of names of licensors or authors [. . .]; or
- e) Declining to grant rights under trademark law for use of some trade names, trademarks, or service marks; or
- f) Requiring indemnification [. . .] by anyone who conveys the material (or modified versions of it) [. . .] for any liability [. . .] on those licensors and authors.

GPLv3

License Compatibility

- GPLv3 restricts the imposition of additional restrictions on downstream licensees

```
10. Automatic Licensing of Downstream Recipients.
```

```
[. . .]
```

```
You may not impose any further restrictions on the exercise of the rights granted or affirmed under this License. [. . .]
```

- As to GPLv2
 - Restrictions in GPLv2 are not identical to those in GPLv3
 - GPLv2 is therefore not compliant with GPLv3
 - Also applies to other OSS licenses
- FSF made several revisions in the final draft of GPLv3 to allow compatibility with the Apache license
 - Sections 7e and 7f
 - Section 10
- But, only one-way compatibility -- licensing of software covered by the Apache license under GPLv3 and not vice-versa

GPLv3

License Adoption

- Software already obtained under GPLv2 does not convert to GPLv3
- However, in certain cases, GPLv2 permits users to “convert” software licensed under GPLv2 to GPLv3

9. The Free Software Foundation may publish revised and/or new versions of the General Public License from time to time. Such new versions will be similar in spirit to the present version, but may differ in detail to address new problems or concerns.

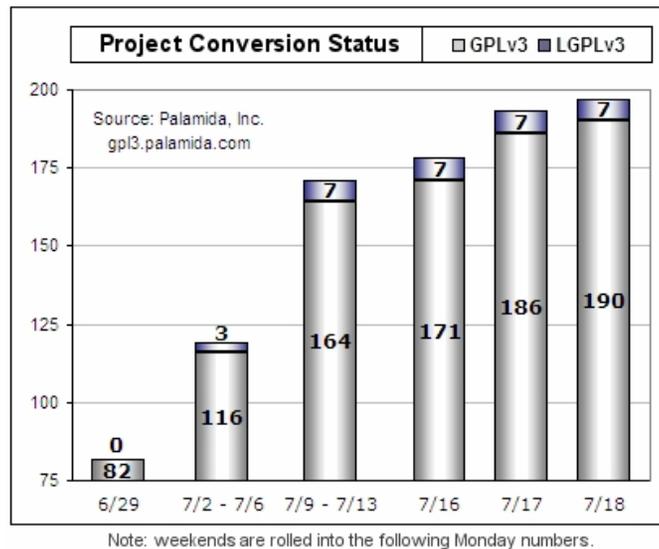
Each version is given a distinguishing version number. *If the Program specifies a version number of this License which applies to it and "any later version", you have the option of following the terms and conditions either of that version or of any later version* published by the Free Software Foundation. *If the Program does not specify a version number of this License, you may choose any version ever published by the Free Software Foundation.*

- Projects themselves may also formally convert from GPLv2 to GPLv3

GPLv3

License Adoption

- Adoption is being tracked by Palamida at <http://gpl3.palamida.com:8080/index.jsp>



- As of this morning
 - 194 projects have converted to GPLv3
 - Another 2818 allow licensing under “GPLv2 or later”
 - Others have committed to GPLv3 on project release roadmaps
- Note that Sourceforge lists over 60,000 projects under the GPL (both active and inactive)

GPLv3

What Does GPLv3 Accomplish?

- Introduction of new provisions reinforcing and extending the ideology of the FSF
 - Anti-software patents
 - Anti-DRM
 - Anti-DMCA
- Increase in length (<3000 words to >5500 words)
- Increase in the amount of material available to help interpret the license (FAQs, drafting history, public statements by the FSF, etc.)
- New questions of interpretation
- Now more than simply “a statement of permissions, some of which have conditions?”
- Is anyone really happy with GPLv3?

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**“The policeman isn’t here to create disorder;
the policeman is there to preserve disorder.”**

Richard J. Daley

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Open Source Lawyers
Full Employment Plan?

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