

# Protecting What You Don't Know Is Yours

It seems self-evident to state that you cannot protect what you don't know is yours. This is the basic principle that this article will emphasize and build upon. Although the principle applies in the case of all property, including intellectual property (IP), it is often ignored in the case of copyrights.

## What you will learn...

- Open Source: defined.
- Today's software is collaborative; developers include code from many sources, including open source code.
- All open source code carries with it certain license obligations.
- Before any code is used in a software product it is crucial to locate understand the legal obligations associated with its use.
- Common misconceptions in open source.

## What you should know...

- Copyrights are automatically applied to all software.
- Just because open source software is freely distributed doesn't mean it's not copyrighted.
- Open source licenses allow authors to maintain authorship rights such as attribution and the right to the integrity of the work.
- When it comes to other's property, it is crucial to understand the legal obligations associated with its use in order to avoid legal repercussions of using someone else's protected goods without permission.

Copyrights easily go unnoticed, because they are attached to works without the author ever asking for them. Indeed, any original and creative work automatically falls under the protection of copyright law. This protection aims to encourage the production of works of lasting benefit to the world (*Washingtonian Co. v. Pearson*, 306 U.S. 30, 36 (1939)) and facilitates access to them (Industry Canada and Canadian Heritage, *A Framework for Copyright Reform* (Industry Canada and Canadian Heritage, 2001), at <http://strategis.ic.gc.ca/pics/rp/framework.pdf>). The economic basis for granting such exclusive rights is the conviction that personal gain is the best way to encourage creators and inventors to produce and publish new works (*Mazer v. Stein*, 347 U.S. 201, 219 (1954)). The protection of intellectual goods prompts creators to share their work immediately rather than keeping it secret, by giving them a right of action against copycats and forgeries. The public benefits both immediately from the disclosure of the work, and later from its incorporation to the public domain at the expiration of copyright protection. In today's knowledge-based economy, the benefits of IP and its value are accentuated. IP is an increasingly valuable commodity, which is bought, sold and exchanged. Here arises the first need to identify works under copyright protection: to protect the valuable goods that we own and exclude others from illegitimately

using the product of our efforts. On the other hand, when it comes to others' property, it is crucial to locate its source and to understand the legal obligations associated with its use in order to avoid the legal repercussions of using someone else's protected goods without permission.

But it's not just about protecting yourself and your property! As Daniel J. Gervais elegantly reflected, *copyright is not a dam, it is a river* (Daniel J. Gervais, *Towards a New Core International Copyright Norm: The Reverse Three-Step Test*, 9 MARQ. INTELL. PROP. L. REV. 1, 7 (2005)). Copyright law should be viewed as a means to direct use, rather than a tool to fend off users. Savvy IP holders will therefore optimize the exploitation of their own IP, as well as those of others, to guide the flow of information and knowledge. Copyright covers all original expressions of ideas. If it is written, drawn, said, or acted, there is copyright involved. Software, as it is written, is no exception. But software is rarely written in isolation; it is generally developed collaboratively. In our modern world of fast-paced communication and knowledge-sharing, the adage proclaiming that two heads are better than one is widened: two hundred heads are better than two... two thousand heads are better than two hundred. Therein lies the power of collaborative innovation. For programmers, communication not only avoids redundancy in efforts, but it also promotes efficiency by allowing others to

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scrutinize existing code and build upon it in their own work. Open source software (OSS) is a great instrument in the exploitation of such opportunities. Generally speaking, OSS is source code that is made available by its author for free redistribution and modification (See Open Source Software Initiative, The Open Source definition, available at <http://www.opensource.org/docs/osd> (describing in detail the specific elements of open source software).). It is a common misconception that OSS carries no copyright. In reality, OSS is copyrighted (just like all original works). The distinguishing mark of OSS is the permission to freely use the work. This permission is given through an OSS license, which specifies the permitted uses as well as the associated limitations and conditions of use. Open source licenses allow authors to maintain authorship rights such as attribution and the right to the integrity of the work. The licenses also enable authors to limit their liability and share their code without fear of legal repercussions. In return, users may use the source code, while respecting the specific conditions attached to its use, such as attaching modification notifications or providing a copy of the OSS license in modified versions of the code. Open source software, when adopted and managed properly, is a bountiful resource that speeds up development, reduces product costs, and contributes to a fuller world

of proven, reliable software that runs every aspect of our life today. Owners and producers of IP can undoubtedly benefit from identifying the protected works that fall within their activities. To fully take advantage of the IP system, put in place to facilitate knowledge sharing, it is essential to have an accurate grasp of the protected works which are used in a collaborative software project. Identification of the external IP can be done through an internal evaluation, or by calling on the assistance of companies that provide products and services that manage software license and copyright obligations. Don't let the fear of the unknown hold you back: protect yourself and tap into this bountiful resource... Know your code, know your IP!

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