

# OPEN SOURCE LICENSING

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PLONE CONFERENCE  
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# DISCLAIMER



# OVERVIEW

- ✻ License Interpretation
- ✻ Crash Course in Copyrights
- ✻ The Plone License
- ✻ Running Products with Plone
- ✻ Distributing Products with Plone



# LEGAL INTERPRETATION

- ✻ Lawyers go through the same process:
  - ✻ Look for cases on point (res judicata)
  - ✻ Look for cases with similar facts
  - ✻ Look to the statute (if there is one)
  - ✻ Look to legislative history (if any)
  - ✻ Best guess



# LICENSE INTERPRETATION

- ✻ On point cases rare
- ✻ Four corners
- ✻ Parole evidence?
- ✻ Parties can affect interpretation of individual clauses
- ✻ Not addressing extra-judicial factors



# CORPUS OF LICENSES

- ✻ Almost all software licenses are based on copyrights
- ✻ Some based on patents
- ✻ In the U.S., copyrights are promulgated under Title 17 of United States Code



# WHAT IS COPYRIGHT?

- ✻ A copyright covers:
  - ✻ The *expression* of an idea that is *fixed* in a tangible media
  - ✻ Does not cover the idea itself
  - ✻ Must have multiple ways to express
  - ✻ Yes, stuff in RAM can be considered fixed and tangible (key is “perceived”)



# COPYRIGHT ACT

✻17 U.S.C. § 106 -- Exclusive Rights in Copyrighted Works:

✻ Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- ✻(1) to reproduce the copyrighted work in copies or phonorecords;
- ✻(2) to prepare derivative works based upon the copyrighted work;
- ✻(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- ✻(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- ✻(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly;



# COPYRIGHTS

- ✻ Licenses can go beyond what copyright law allows (with proper formation)
- ✻ The corpus of open source licenses, for various reasons, rely exclusively on the copyright laws



# LICENSES AND COPYRIGHT

- ✻ Courts normally construe licenses against the licensor
- ✻ Licenses need to be explicit about what the licensee can and cannot do
- ✻ Characterization of the work determines which aspects of copyright law apply
- ✻ Thus, proper characterization of the work and unambiguous license terms are essential



# COPYRIGHTS

- ✻ Characterization of a Work

- ✻ Original Work

- ✻ Joint Work

- ✻ Derivative Work

- ✻ Collective Work

- ✻ Combination Work



# COPYRIGHT

- ✻ Original Work
  - ✻ Virgin code
  - ✻ Done entirely by author
  - ✻ May, in certain circumstances, include other people's work



# JOINT WORKS

- ✻ A “joint work” is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.  
(17 U.S.C. § 101)



# JOINT WORKS

- ✻ Joint authors usually manifest their intent to create a joint work by documenting, in a contract between them, the specific relationship they intend to forge while working together on the work
- ✻ Proof that something is a joint work requires proof of the intention of the author



# DERIVATIVE WORKS

## ☼ Definition of a Derivative Work

☼ A work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a derivative work. (17 U.S.C. § 101)



# OTHER WORKS

## ✻ Collective and Compilation Works:

- ✻ A “collective work” is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole. (17 U.S.C. § 101)
- ✻ A “compilation” is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term “compilation” includes collective works. (17 U.S.C. § 101)



# WHAT'S THE DIFF?

- ✻ In the case of a joint work, each contributing author owns an undivided interest in the combination of contributions
- ✻ In the case of both a derivative work and a collective work, the contributing author owns only his or her own contribution



# WHAT'S THE DIFF?

- ✻ In the U.S., unless they agree otherwise, each of the joint authors may separately license a joint work -- and all its parts -- without the consent of any other joint author (but may need to account for profits)



# DISTINCTION

- ✻ What distinguishes a derivative work from a joint work based on inseparable parts?
- ✻ What distinguishes a collective work from a joint work based on interdependent parts?



# DISTINCTION

- ✻ The distinction lies in the intent of each contributing author at the time his/her contribution is written



# DISTINCTION

- ✻ If the work is written with the intention that his/her contribution be merged into inseparable or interdependent parts of a unitary whole, then the merger of his contribution to that of others creates a joint work
- ✻ If such intention occurs only after the work has been written, then the merger results in a derivative or collective work



# THE PLONE LICENSE

- ✻ The GNU Public License (GPL)
  - ✻ Explicitly disclaims use and original works.
  - ✻ Explicitly covers derivative works.
  - ✻ Explicitly covers collective works.
  - ✻ Silent as to compilation works and joint works.



# THE GPL

- ✻ Ignore the preamble
- ✻ Fairly clear and straightforward with respect to derivative works
- ✻ But overreaching for some derivative works
- ✻ Problems with respect to collective works



# THE GPL

- ✻ “Activities other than copying, distribution and modification are not covered by this License; they are outside its scope. The act of running the Program is not restricted, and the output from the Program is covered only if its contents constitute a work based on the Program (independent of having been made by running the Program). Whether that is true depends on what the Program does.” (GPL, Section 0)



# THE GPL

- ✻ “But when you distribute the same section as part of a whole which is a work *based* on the Program, the distribution of the whole must be on the terms of [the GPL], whose permissions for other licensees extend to the entire whole, and thus to each and every part regardless of who wrote it.” (GPL Section 2, emphasis added)



# US COPYRIGHT ACT

- ✻ The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. (17 U.S.C. § 103(b))



# MORE US LAW

- ✻ Derivative works are based on one or more preexisting works
- ✻ Collective works are not *based* on preexisting works



# THE GPL

- ✻ ... In addition, mere aggregation of another work not based on the Program with the Program (or with a work based on the Program) on a volume of a storage or distribution medium does not bring the other work under the scope of this License. (GPL Section 2)
- ✻ Thus, reciprocity (re linking) applies only to derivative works



# REMEDIES

- ✻ The owner ... has the exclusive right ... (2) to prepare derivative works based upon the copyrighted work. (17 U.S.C. § 106(2))
- ✻ Actual Damages and Infringer's Profits (17 U.S.C. § 504(b))
- ✻ Statutory damages -- \$750 to \$30,000 per copy (17 U.S.C. § 504(c))



# INFRINGEMENT

- ✻ Infringement does not depend upon the state of mind of the alleged infringer
- ✻ There are defenses to infringement
  - ✻ Fair Use
  - ✻ Implied license
  - ✻ Non-infringement



# IMPORTING IN PYTHON

- ✻ The interpreter compiles a copy of the script source code and loads the compiled version into a first portion of RAM
- ✻ The interpreter detects that the script imports a module
- ✻ The interpreter compiles a copy of the source code of the imported module into a module object that occupies a second (distinct and separate) portion of RAM



# IMPORTING IN PYTHON

- ✻ the interpreter registers the module object under its name in the list of imported modules (`'sys.modules'`)
- ✻ The script calls a function in the module, or uses another of its entry points (*e.g.*, a class, or a constant), via the pointer bound to the name of the entry point (that was generated by the interpreter)



# IMPORTING IN PYTHON

- ✻ Using the pointer provided by the interpreter, the interpreter takes the call parameters from the script and executes the code in the module, returning the results (output) back to the calling script
- ✻ The interpreter continues to execute the instructions in the script (using the output as necessary)



# IMPORTING IN PYTHON

- ✻ The script tries to instantiate a class defined in the module
- ✻ The interpreter creates a base object that is handed off to the module (using the pointer provided earlier)
- ✻ The module modifies the base object to add the properties and/or methods of the object defined in the module



# IMPORTING IN PYTHON

- ✻ The modified object is returned to the script (as output from the module)
- ✻ The interpreter continues to execute the instructions in the script




# THE GPL

- ✻ “If you wish to incorporate parts of the Program into other free programs whose distribution conditions are different, write to the author to ask for permission.” (GPL Section 10)



# CONCLUSIONS

 Don't Panic



# CONCLUSIONS

- ✻ Using non-GPL products with Plone likely does not make a derivative work
- ✻ Distributing non-GPL products with Plone as a collective work does not mean those same products must have the same (GPL) license



# CONCLUSIONS

- ✻ The Plone Foundation -- not the FSF -- is the only entity with standing under law to assert its interpretation of the GPL with respect to Plone
- ✻ If you have fears, address them with the Plone Foundation
- ✻ The judge will ultimately decide such an interpretation if a conflict reaches that level



QUESTIONS?