



Article for Saliterman Law (597 words)

By Samuel Choy for MLT Group

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GPL Dangers to Intellectual Property

You run a small Minneapolis, Minnesota based software development company. One of your programmers suggests incorporating an Open Source library in your code. He explains that the software is free, licensed with the GNU General Public License. What's the worst thing that could happen? Should you contact your business attorney?

The availability Open Source software has increased exponentially over the last decade. Open Source software provides almost every type of software imaginable. However, just because software is Open Source, does not mean that its use comes with no conditions. In fact, most Open Source software comes with a license that specifies what users and developers can do with it. One widely used license is the GNU General Public License (GPL). To protect your intellectual property, it is extremely important to understand the terms of the GPL before you incorporate any code licensed by the GPL in your software.

What is the GPL?

The GPL is one of several software licenses published by the Free Software Foundation. More than half of Open Source software uses the GPL. The GPL is a copyright license that specifies how a work under the license can be used, distributed, or modified. The GPL basically states anyone can use, distribute, sell, or modify software licensed under the GPL. If someone modifies and redistributes a GPL licensed work, the modified work must also be licensed under the GPL.

Copyleft: The Philosophy Behind the GPL

The GPL preamble states, "When we speak of free software, we are referring to freedom, not price." In other words, the GPL does not restrict software under its license from being sold, but that any user or developer is free to redistribute, sell, or modify it. The GPL states that it is a "copyleft," as opposed to a copyright. For copyrighted works, the copyright owner can restrict how the work is distributed. However, under the GPL's "copyleft," the copyright owner is restricted from deciding the terms in which the work is distributed. Anyone can distribute, modify, or sell the work without any reimbursement to the creator. Though there is nothing inherently wrong or illegal about this, it has severe implications if you incorporate code licensed under the GPL.

How the GPL Affects Your Intellectual Property

Paragraph 5c of the GPL Version 3 states, "You must license the entire work, as a whole, under this License to anyone who comes into possession of a copy." Therefore, if you use GPL licensed code in your intellectual property, under the terms of the GPL, the entire work is subject to the GPL. This means that you cannot patent it, nor can you restrict its distribution. This mandate applies not only to compiled binary files, but also to the source. Any confidential code your company has developed will be available to the public, including your competition.



Samuel R Choy, Freelance Writer
samuelrchoy@gmail.com
505-227-0786

Contact an Intellectual Property Attorney

If the application you are developing is an Open Source project, there might not be harm in using GPL licensed. However, if you want to protect your intellectual property, especially if you are applying for a software patent, using any Open Source software can be problematic. Therefore, before you include any GPL licensed code in your software, even as a library that your proprietary code accesses, you need to contact a Minnesota business lawyer, or even better, an intellectual property attorney, to ensure you are not giving away your intellectual property. Furthermore, if you discover that your software includes any Open Source code, you should contact an intellectual property lawyer to take measures to protect your intellectual property.