

Open Source license compliance and infringement issues

Dr. Till Kreutzer

Attorney-at-Law, iRights.Law – Lawyers for the Digital World



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AGENDA

1 License compliance and infringement - The basics

2 Potential consequences of license violations

License compliance and infringement

- The basics



- To use a copyright/patent protected software, the user needs a license
- Open Source Software is not public domain! Open Source Licenses are no waiver of rights but a consent to use the software under certain conditions
- In general, Open Source Licenses grant copyright and – if needed – patent licenses to use the software under the terms of the license

License compliance and infringement

- The basics



- Esp. copyleft licenses use an automatic termination mechanism: The license terminates automatically upon any violation of the license terms
- That effect can be caused by the violation of any license obligation

Typical license infringements

- The use of Open Source components is not mentioned at all
- License texts are not provided
- Source code of copyleft components is not or not completely provided
- Copyleft obligation is violated
- Copyright notices are not or not properly provided
- Liability disclaimers are missing

License compliance and infringement



- Effect of the automatic termination mechanism: User loses the right to use the software. Any further use (unless license compliance is established) is a copyright/patent infringement.
- Legal consequence: Non-compliance triggers the full range of copyright/patent/contractual remedies

AGENDA

1	License compliance and infringement - The basics
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2	Potential consequences of license violations
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Potential consequences of license violations

- **Potential consequences range over:**
 1. Effects on the external relationship to the rights owners: Rights enforcement by the copyright/patent right owner
 2. Effects on the internal relationship to a contractual partner: Contractual remedies including damages, in worst-case-scenario termination of the whole software project
 3. External, non-legal, consequences: Economical issues, Reputation damages, PR disasters, unsolvable conflicts with the community, M&A issues
 4. Criminal law consequences

Example: Injunctions as a possible consequence of non-compliance

- Injunctions are the most threatening legal remedy for the non-compliant user!
- Unless compliance is established the software or the product including the software must not be distributed anymore
- Depending on the applicable law: any further distribution of the non-compliant software/product can lead to penalties
- Injunctions can be enforced e.g. by seizing products at import or on trade fairs etc.

Example: Injunctions as a possible consequence of non-compliance



- In addition to an injunction, under EU law the rights owner can claim to recall IP infringing products/software from the market and the destruction of in-stock copies
- Potential consequences: Products that contain infringing software (e.g. embedded systems) must be recalled from the market*, stocks must be destroyed, online available programs must be taken offline as long as compliance is established etc.

2nd Example: Non-legal (economic, marketing PR) consequences of non-compliance



- Software that is not OS compliant cannot be legally used and distributed
- **Economical, marketing and PR issues will arise!**

2nd Example: Non-legal (economic, marketing PR) consequences of non-compliance

- If non-compliance is **internally revealed** (before use or distribution), potential consequences are:
 - Additional, time-consuming and costly redevelopments;
 - Delayed introduction, roll-out, distribution;
 - Disappointment/complaints from the customers;
 - In a worst case scenario uselessness of the whole product.

2nd Example: Non-legal (economic, marketing, PR) consequences of non-compliance



- If non-compliance is **revealed by third parties**, potential consequences are:
 - PR disasters and damages to reputation;
 - Loss of trust from the communities side. Remember: Open Source Software users are highly dependent on a good relationship to the community!;
 - Potentially unsolvable disputes with the community;
 - HR issues with hiring competent developers.

**Thank you for your
attention!**