

최신 공개SW 라이선스 및 특허 이슈

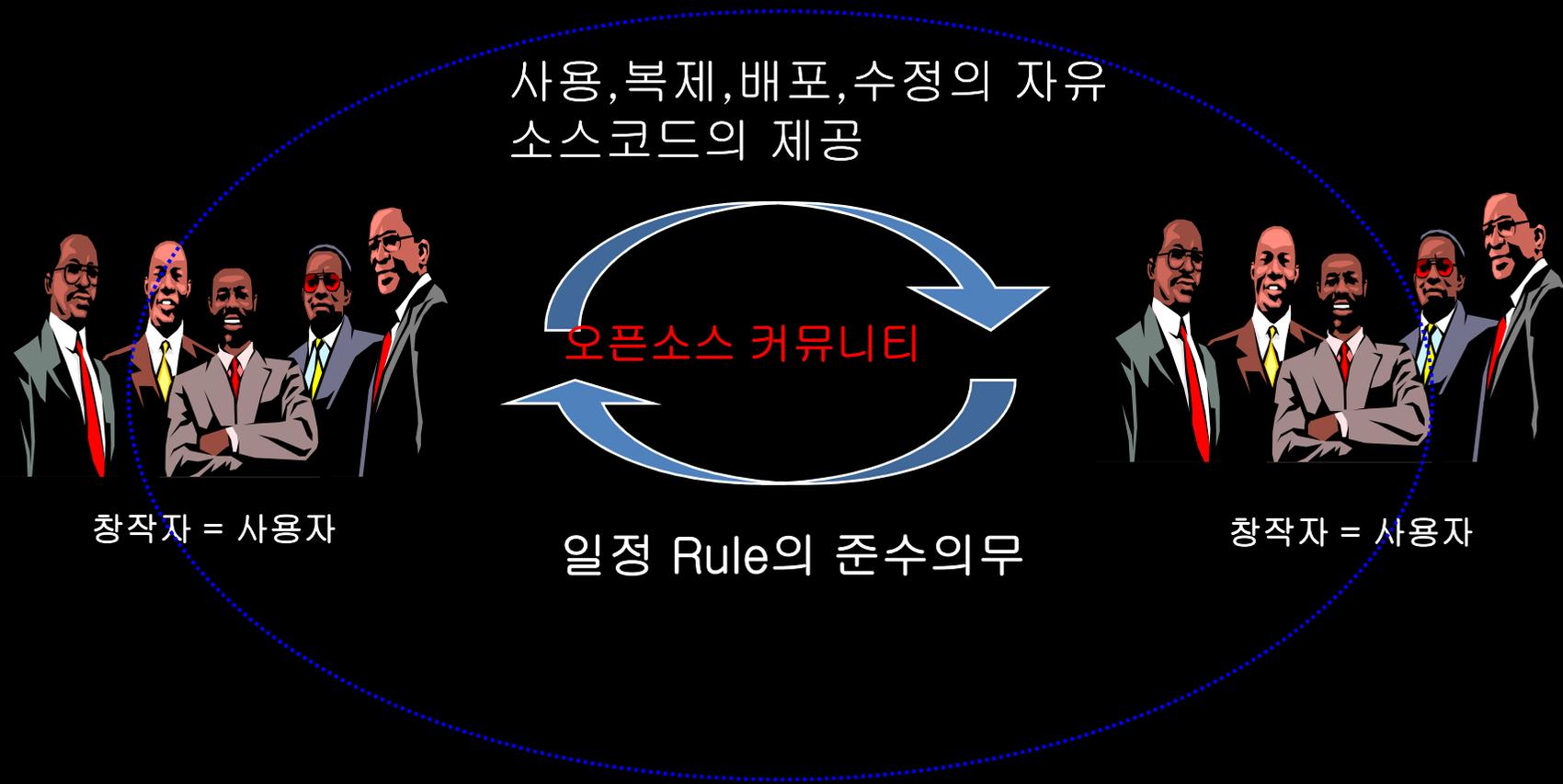
충남대 법학전문대학원

이 철 남

주요 내용

- 최근의 오픈소스 라이선스 이슈
 - Cea Cnrs Inria Logiciel Libre License, version 2.1 (CECILL-2.1)
 - CeCILL-B and CeCILL-C
- OSS 관련 특허 이슈
 - OSS 커뮤니티의 특허권
 - 제3자의 특허권
 - 자사의 특허권
- 기타
 - 새로운 OSS의 배포와 라이선스 쟁점

OSS Licenses



CECILL-2.1

- CEA, CNRS and Inria launched a projet to write Free Software licenses conforming to French law, and released CeCILL in july 2004.
- May 30, 2005 CeCILL family : CeCILL-B, CeCILL-C, and version 2 of CeCILL
- June 21, 2013 version 2.1 of CeCILL

CECILL-2.1

- Article 3 - ACCEPTANCE
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 - (ii) the first time the Licensee exercises any of the rights granted hereunder.

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4.2 TERM

The Agreement shall remain in force for the entire legal term of protection of the economic rights over the Software.

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- Article 6 - INTELLECTUAL PROPERTY

- 6.1 OVER THE INITIAL SOFTWARE

- 6.2 OVER THE CONTRIBUTIONS

- 6.3 OVER THE EXTERNAL MODULES

- 6.4 JOINT PROVISIONS

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13.2 Failing an amicable solution within two (2) months as from their occurrence, and unless emergency proceedings are necessary, the disagreements or disputes shall be referred to the Paris Courts having jurisdiction, by the more diligent Party.

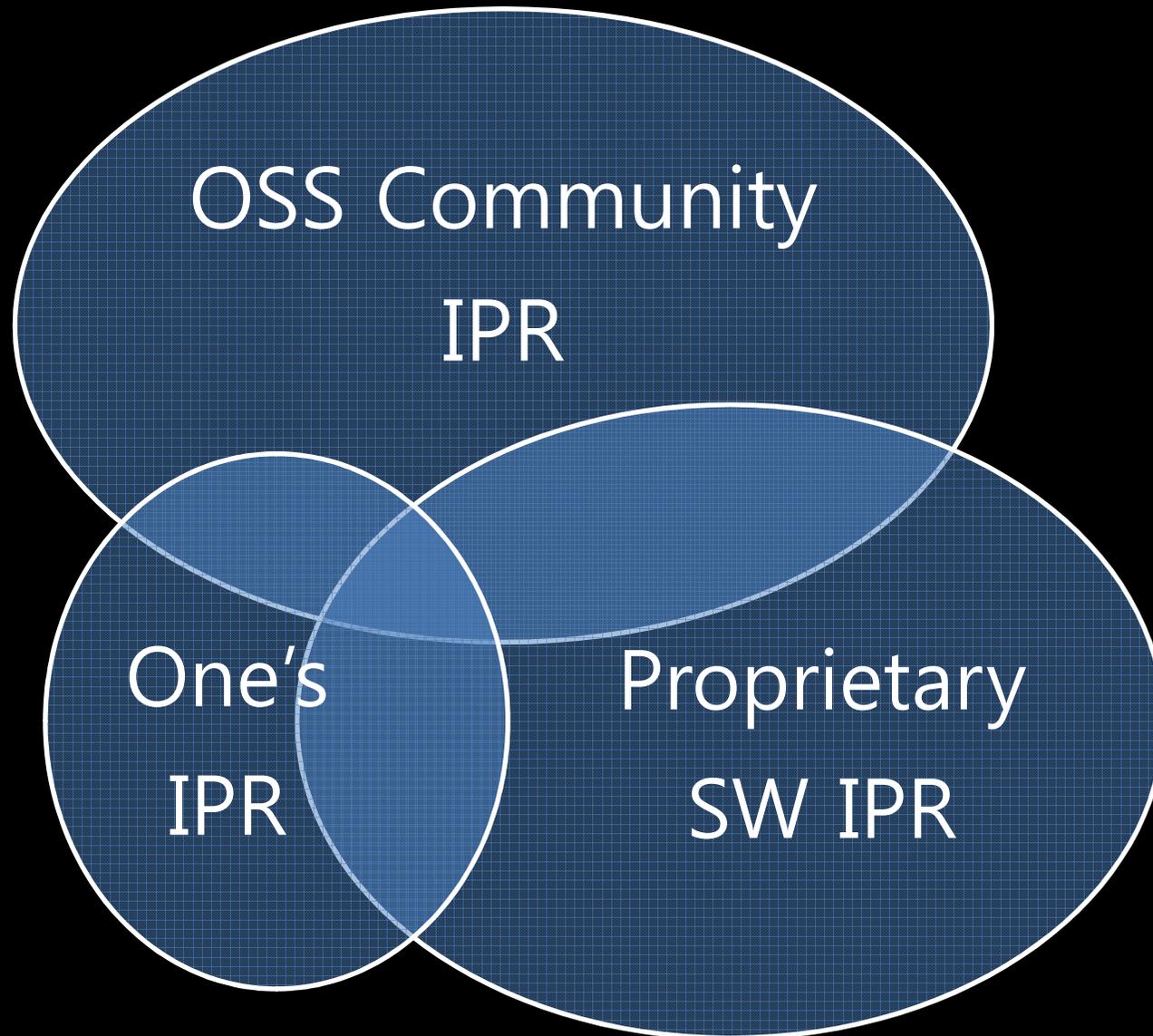
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- strong citation obligations (in all software incorporating a program covered by CeCILL-B and also through a Web site),
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OSS의 지재권 관련 리스크

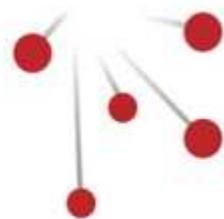


OSS 관련 특허 이슈

- OSS 커뮤니티의 특허권
 - OSS 라이선스의 특허관련 조항
 - 기여자 계약에서의 특허관련 조항
 - Open Invention Network
- 제3자의 특허권
 - Linux 특허권 분쟁, Jboss 특허권 분쟁
 - 안드로이드 관련 (애플 v. 삼성전자, MS v. Motorola)
- 자사의 특허권

- Apache 2.0

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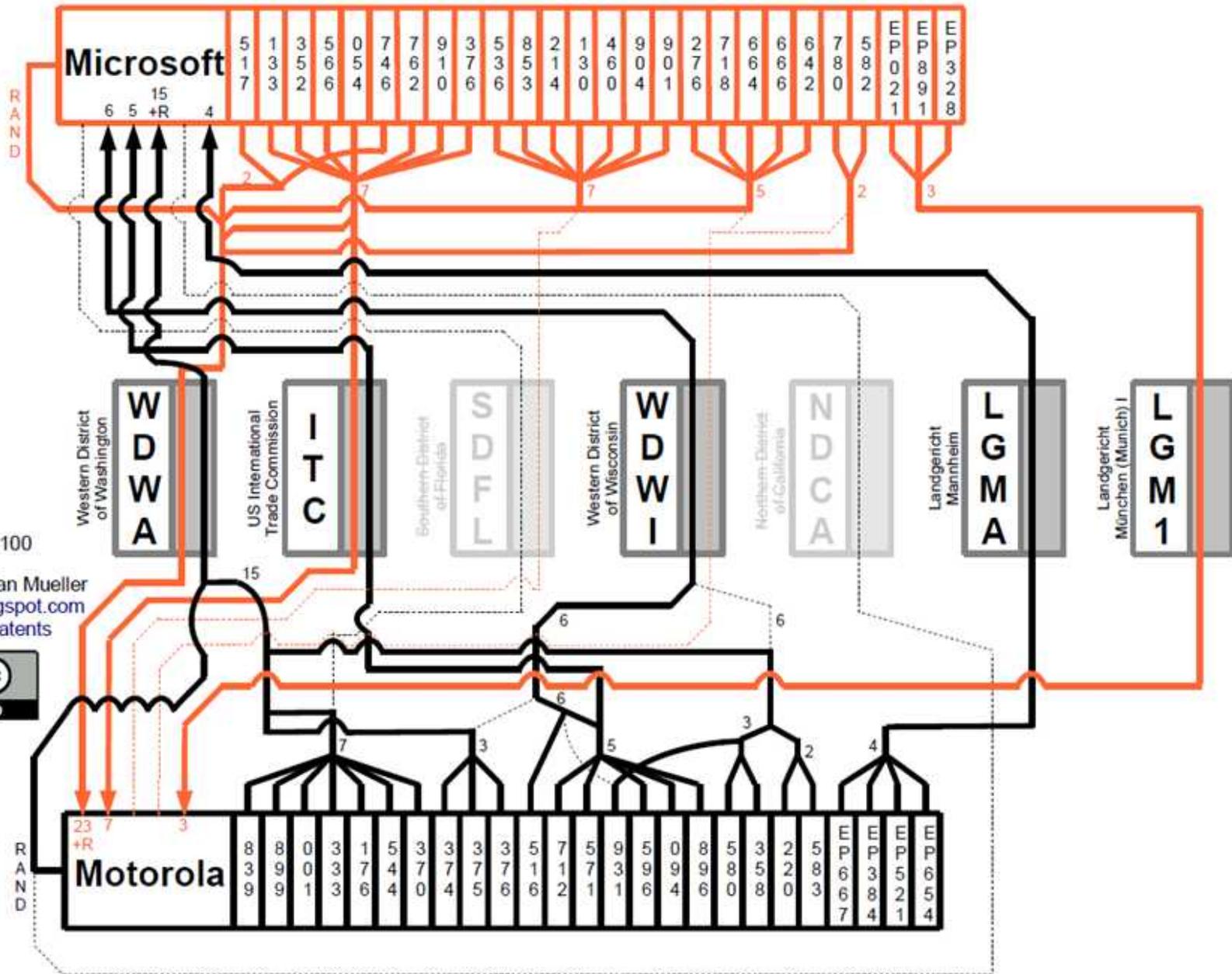
OSS 관련 특허 이슈

- OSS 커뮤니티의 특허권
 - OSS 라이선스의 특허관련 조항
 - 기여자 계약에서의 특허관련 조항
 - Open Invention Network
- 제3자의 특허권
 - Linux 특허권 분쟁, Jboss 특허권 분쟁
 - 안드로이드 관련 (애플 v. 삼성전자, MS v. Motorola)
- 자사의 특허권

Microsoft
versus
Motorola

The patent
battlefield
as of
11 Dec 11

The next 17
pages show
how this
conflict has
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Move by
move.



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- 자사의 특허권 관련 리스크

- 오픈소스 프로젝트에 참여하는 경우

- 오픈소스 라이선스에 의한 특허 라이선스 허락
 - 기여자 계약에 의한 특허 라이선스허락

- 단순 배포자의 경우

- 오픈소스 이용자를 상대로 한 특허소송의 문제점
 - 특허 라이선스의 묵시적 허락여부

- GPL v.3

...

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-

- 자사의 특허권 관련 리스크

- 오픈소스 프로젝트에 참여하는 경우

- 기여자 계약에 의한 특허 라이선스 허락
 - 오픈소스 라이선스에 의한 특허 라이선스 허락

- 단순 배포자(이용자)의 경우

- 오픈소스 이용자를 상대로 한 특허소송
 - 특허 라이선스의 묵시적 허락여부

- Apache 2.0

If You institute patent litigation against any entity (including a cross-claim or counterclaim in a lawsuit)

alleging that the Work or a Contribution incorporated within the Work constitutes direct or contributory patent infringement, then any patent licenses granted to You under this License for that Work shall terminate as of the date such litigation is filed.

- CPL

If Recipient institutes patent litigation **against a Contributor with respect to a patent applicable to software** (including a cross-claim or counterclaim in a lawsuit), then any patent licenses granted by that Contributor to such Recipient under this Agreement shall terminate as of the date such litigation is filed.

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새로운 OSS의 배포와 라이선스

- 기존 커뮤니티에 참여하는 경우
 - 기존 커뮤니티 라이선스와 Compatible 라이선스 사용
- 신규 커뮤니티를 형성하는 경우
 - 소스코드의 배포 및 커뮤니티 사이트 구축
 - 라이선스의 선택
 - 거버넌스 구축

기존 커뮤니티 참여시 고려사항

- 커뮤니티의 비교
 - 활성화 정도, 참여자 규모, 개방성, 라이선스
- 컨트리뷰션시 고려사항
 - 영어기반의 커뮤니티에 한국의 개발자들이 얼마나 참여할 수 있을까?
 - 홍보효과?

신규 커뮤니티의 형성

- 소스코드의 배포 및 커뮤니티의 형성
 - 배포 사이트의 선택
 - 커뮤니케이션 툴
- 라이선스의 선택
 - Apache v. GPL
- 거버넌스 구축
 - Committer, Advisory 그룹
 - Code Approval Process
 - Contributor Agreement

거버넌스 구축 등

- 거버넌스 구축
 - Committer, Advisory 그룹 등
- Code Approval Process
- Contribution Agreement
 - 저작권 양도(공유) v. 라이선스
- 기타 쟁점
 - 특허