

# **Legal Issues Around Open Source Using, Sharing, and Releasing**

## Speakers:

**Bryan Geurts**

Chief Patent Counsel, NASA Goddard Space Flight  
Center (GSFC)

**Van Lindberg**

Attorney, Haynes and Boone

**Vicki Allums**

Associate General Counsel for Intellectual Property,  
Defense Information Systems Agency (DISA)



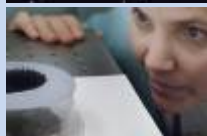
# OPEN SOURCE SOFTWARE IN THE NASA ENVIRONMENT: A LEGAL PERSPECTIVE

Presented to:

**Government Open Source Conference**

**Thursday, November 5, 2009**

**Bryan A. Geurts  
Chief Patent Counsel  
Goddard Space Flight Center  
Bryan.A.Geurts@nasa.gov**





# KNOW YOUR AUDIENCE

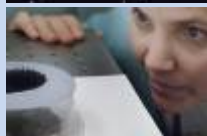
NASA Goddard Space Flight Center





# AGENDA

- **A Legal Definition of “Open Source Software”**
- **The Open Source Initiative**
- **Legal Theories for Protecting Open Source Software**
- **Legal Issues Unique to the Government**



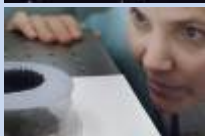




# DEFINING OPEN SOURCE SOFTWARE

- **What it is NOT:**

- Shareware: Proprietary software that is provided to users without payment on a trial basis and is often limited in any combination of functionality, availability, or convenience. (Wikipedia)
- Freeware:
  - *Freeware is NOT “free software” as defined by the Free Software Foundation (sponsors of the GNU General Public License) – the difference between free beer and free speech*
  - Computer software that is available for use at no cost or for an optional fee (Wikipedia)





# DEFINING OPEN SOURCE SOFTWARE

- **What it MIGHT be:** In the absence of any legally codified definition, the ten-point OPEN SOURCE DEFINITION (OSD) promulgated by the Open Source Initiative (OSI) may provide the best working definition:
  1. **Free Redistribution** The license shall not restrict any party from selling or giving away the software as a component of an aggregate software distribution containing programs from several different sources. The license shall not require a royalty or other fee for such sale.
  2. **Source Code** The program must include source code, and must allow distribution in source code as well as compiled form. Where some form of a product is not distributed with source code, there must be a well-publicized means of obtaining the source code for no more than a reasonable reproduction cost preferably, downloading via the Internet without charge. The source code must be the preferred form in which a programmer would modify the program. Deliberately obfuscated source code is not allowed. Intermediate forms such as the output of a preprocessor or translator are not allowed.





# DEFINING OPEN SOURCE SOFTWARE

- 3. Derived Works** The license must allow modifications and derived works, and must allow them to be distributed under the same terms as the license of the original software.
- 4. Integrity of The Author's Source Code** The license may restrict source-code from being distributed in modified form only if the license allows the distribution of "patch files" with the source code for the purpose of modifying the program at build time. The license must explicitly permit distribution of software built from modified source code. The license may require derived works to carry a different name or version number from the original software.
- 5. No Discrimination Against Persons or Groups** The license must not discriminate against any person or group of persons.
- 6. No Discrimination Against Fields of Endeavor** The license must not restrict anyone from making use of the program in a specific field of endeavor. For example, it may not restrict the program from being used in a business, or from being used for genetic research.
- 7. Distribution of License** The rights attached to the program must apply to all to whom the program is redistributed without the need for execution of an additional license by those parties



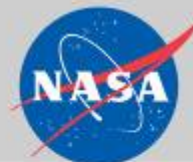




# DEFINING OPEN SOURCE SOFTWARE

- 8. License Must Not Be Specific to a Product** The rights attached to the program must not depend on the program's being part of a particular software distribution. If the program is extracted from that distribution and used or distributed within the terms of the program's license, all parties to whom the program is redistributed should have the same rights as those that are granted in conjunction with the original software distribution.
- 9. License Must Not Restrict Other Software** The license must not place restrictions on other software that is distributed along with the licensed software. For example, the license must not insist that all other programs distributed on the same medium must be open-source software.
- 10. License Must Be Technology-Neutral** No provision of the license may be predicated on any individual technology or style of interface.





# THE OPEN SOURCE INITIATIVE CERTIFICATION

- Means the OSI Board of Directors certifies that a License meets the OSD Standard
- Approved Licenses Include the General Public License (GPL), BSD, Mozilla and the NASA Open Source Agreement (NOSA)
- OSI Website Lists All Approved Licenses:  
[www.opensource.org](http://www.opensource.org)
- Allows the Approved License to Bear the OSI Certification Mark (Like the Good Housekeeping Seal of Approval)





# LEGAL THEORIES PROTECTING OSS

- **Copyright**
  - **License v. Contract**
- **Patent**
- **Trademark**
- **Contract**
  - THE UNITED STATES GOVERNMENT, AS REPRESENTED BY GOVERNMENT AGENCY, IS AN INTENDED THIRD-PARTY BENEFICIARY OF ALL SUBSEQUENT DISTRIBUTIONS OR REDISTRIBUTIONS OF THE SUBJECT SOFTWARE.





# Thank You For Your Attention

- **Questions?**
- **Contact Information**

Bryan A. Geurts

Chief Patent Counsel

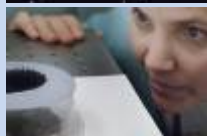
NASA Goddard Space Flight Center

Code 140.1

8800 Greenbelt Road

Greenbelt, MD 20771

(301) 286-7352





# OPEN SOURCE SOFTWARE (OSS) -- BEST PRACTICES FOR FEDERAL AGENCIES

Vicki E. Allums, (703) 681-0378,  
[vicki.allums@disa.mil](mailto:vicki.allums@disa.mil)  
November 5, 2009

Government Open Source Conference D.C.  
(GOSCON D.C.)



# AGENDA

- CENDI Open Source Software FAQ
- Policy Guidance (e.g. DoD)
- Using OSS - Issues for Federal Agencies
- Licensing and Contractual Considerations
- Using OSS - Advantages and Disadvantages

# CENDI

- Voluntary Cooperative of 13 Federal Agencies
- Founded in 1983
- “CENDI” Formed from the first letter of member departments (i.e., C for Commerce; E for Energy; N for NASA; D for Defense; I for Interior)
- Group Agreed to Retain Name

# CENDI

- CENDI Web Page

[www.CENDI.gov](http://www.CENDI.gov)

- Companion Document to the “CENDI Frequently Asked Questions About Copyright”

<http://www.cendi.gov/publications/04-8copyright.html>



# CENDI OPEN SOURCE SOFTWARE FAQ

“Frequently Asked Questions about Copyright and Computer Software -- Issues Affecting the U.S. Government with Special Emphasis on Open Source Software”

<http://www.cendi.gov/publications/index.html>

# THE DOCUMENT -- TOPICS

- 1.0 -- Glossary of Terms
- 2.0 -- Computer Software Copyright Basics
- 3.0 -- Open Source Software – The Basics
- 4.0 -- Computer Software and The U.S. Government





# THE DOCUMENT --TOPICS

- 5.0 -- Case Law on OSS Licensing:  
U.S. and International
- 6.0 -- Advising Government Clients on  
Use of Open Source Software:  
Tips and Best Practices
- 7.0 -- Legislation and Other Resources

# POLICY AND OTHER GUIDANCE

- OMB MEMO M-03-14 (June 2003)
- FDIC
- DoD
  - [Clarifying Guidance Regarding Open Source Software \(OSS\)](#)  
Memorandum by David M. Wennergren, 16 October 2009
  - [DoD Open Source Software Frequently Asked Questions](#)
  - [Use of Free and Open-Source Software \(FOSS\) in the U.S. Department of Defense](#) (2003 Study by MITRE Corporation performed for DoD)
- U.S. Navy Memo
- U.S. Army Regulation 25-2



# USING OSS -- ISSUES FOR FEDERAL AGENCIES

- DFARS and Open Source Software
- Licensing Rights
- USG Created/Proprietary Software



# LICENSING/CONTRACTUAL CONSIDERATIONS

- Evaluate Licensing and Contractual Terms
  - Warranties
  - Indemnification
  - Distribution and Redistribution of code
  - Applicable law and dispute resolution mechanisms

# USING OSS -- ADVANTAGES & DISADVANTAGES

- Advantages of OSS
  - Reliability
  - Access to Source Code
  - Reduced Dependence on a Particular Vendor, Developer or Product
  - Potential Cost Savings
  - Statutory Preference for Acquisition of Commercial Products



# USING OSS -- ADVANTAGES & DISADVANTAGES

- Disadvantages of OSS
  - Incompatible License
  - Limited Maintenance and Support
  - Inability to Negotiate License Terms



# DISA OSS PROJECTS

- FORGE.MIL
- DISA/OSI OPEN SOURCE CRADA

# **Does Government Need A Shared Development Platform?**

# Does Government Need A Shared Development Platform?

## **Speakers:**

**Rob Vietmeyer**

Forge.mil Project Director, Defense Information Systems  
Agency (DISA)

**Neil Bonner**

Manager for Applications Development, Transportation  
Security Administration



Robert Vietmeyer  
Forge.mil Project Director  
[rob.vietmeyer@disa.mil](mailto:rob.vietmeyer@disa.mil)



# A collaborative environment to accelerate the deployment of dependable software within the Department of Defense

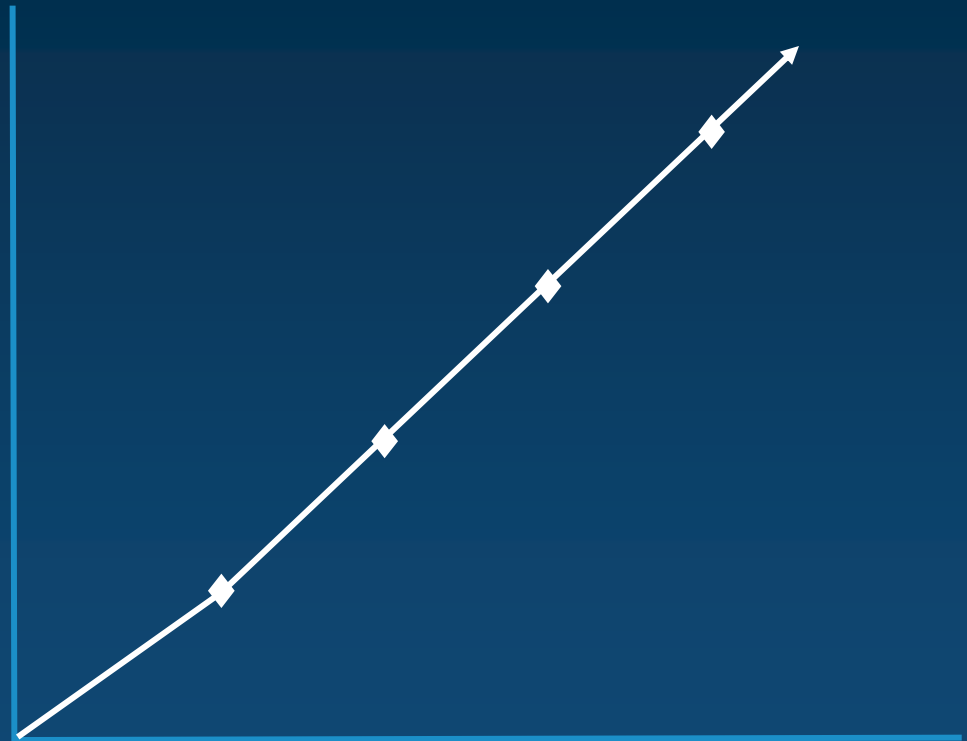
- Agile development
- Open & community source software
  - Application development services
  - Cloud Computing

# Open & Community Source Development

**Customers: 3500+**  
**Projects: 140+**

**File Releases: 440+**  
**Downloads: 10,000+**

**S/W Commits: 4400+**  
**Trackers: 3600+**



# Next Steps

Fee-for-service application life-cycle management services

Continuous integration with DISA's RACE Cloud Infrastructure

Testing and Certification as a Service



## Learn More

[www.forge.mil](http://www.forge.mil) (NIPRNet)

[www.forge.smil.mil](http://www.forge.smil.mil) (SIPRNet)

[webmaster@forge.mil](mailto:webmaster@forge.mil)

Twitter: ForgeMil

## Questions?

Tell us what you think:  
Complete the survey