

# Open Source Software Licensing in Our Brave New World

**ACC Mountain West**

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# **Why is Open Source Important?**

- **It is ubiquitous**
- **It runs key infrastructure**
- **It is eclipsing proprietary software**
- **It is big business**
- **It supports transparency, security, and community participation**

# The Four Essential Freedoms of Free Software (aka open source)

A program is free software if the program's users have the four essential freedoms:

The freedom to run the program as you wish, for any purpose (freedom 0).

The freedom to study how the program works, and change it so it does your computing as you wish (freedom 1). Access to the source code is a precondition for this.

The freedom to redistribute copies so you can help others (freedom 2).

The freedom to distribute copies of your modified versions to others (freedom 3). By doing this you can give the whole community a chance to benefit from your changes. Access to the source code is a precondition for this.



# **Enforcement Developments**

# Enforcement



- **Most enforcement is informal**
- **Most enforcement is by community enforcers**
- **Types of enforcers**
  - **Community**
  - **Strategic**
  - **Trolls**

## Enforcement: The Latest

- Late 2020: SFC received a grant for enforcement efforts
- <https://sfconservancy.org/news/2020/oct/01/new-copyleft-strategy-launched-with-ARDC-grant/>
- Efforts focusing on IoT
- Consumer electronics has always been a high-risk vertical for open source



## Enforcement: The Latest

- SFC filed a lawsuit against Vizio relating to smart TVs  
<https://sfconservancy.org/copyleft-compliance/vizio.html>
- Not a copyright infringement claim
- No authors are parties
- Filed in state court
- Vizio moved to remove to federal court, but federal court would not take jurisdiction. As of May 2022, case was remanded to state court.



## Effects of the Test Case

- SFC's theory of standing would substantially increase risk of enforcement
- Could result in uncoordinated and frequent enforcement
- Injunctive relief would make open source users much more risk averse, possibly set back adoption
- Would this be a win for open source?



# Enforcement: The Latest

- SFC made a formal statement demanding that John Deere comply with GPL
- <https://sfconservancy.org/blog/2023/mar/16/john-deere-gpl-violations/>
- SFC said it had been asking “privately for multiple years”
- Focused on right to repair (farm equipment)



# AI/ML and Copyright

- **Generative AI has raised some new issues tangential to open source licensing**
- **Most AI issues are not open source-specific**
- **Co-Pilot Class Action <https://githubcopilotlitigation.com/>**
  - **Based on GITHUB use of Co-Pilot, a model trained on open source software**
  - **Filed by Matthew Butterick (famous re: law and typesetting)**
  - **Unnamed class plaintiffs (open source authors) against GitHub, Microsoft, OpenAI**
  - **NOT a copyright infringement claim, but does include DMCA claims based on removal of copyright information**
  - **Claims of unfair competition, fraud, breach of contract, etc.**
  - **<https://lwn.net/Articles/914150/>**
  - **Remedies or ways to avoid this problem are unclear**
  - **Most AI training is probably fair use, but the issue is unsettled**

# AI/ML – Copyright Issues

- **ML models are not “collages”**
- **ML models are not software**
- **ML models are a collection of weights (probabilities), such as, if you write X, the next word/phrase will be Y**
- **Short words and phrases do not enjoy copyright protection**
- **Scene-a-faire does not enjoy copyright protection**
- **Therefore, training an ML model probably:**
  - **Does not “redistribute” the data to the user**
  - **Does not represent copying of protectable material**
  - **Does not produce a “derivative work” of the data**
  - **...or if it does, is probably fair use**

# AI/ML – What's Next

- **Legal challenges will continue for years**
- **Challenges will be based on not only copyright, but privacy and other legal doctrines**
- **Legal challenges may significantly hamper innovation**
- **Defendants with large war chests will likely defend ML vigorously, but smaller defendants may suffer in the meantime**

# AI/ML – Licensing

- **ML models are not software, and licensing for them is not standardized**
- **Data used to train models is subject to a minefield of licenses, and lack of licenses**
- **Stable Diffusion is under the ML-RAIL license, an “ethical” license which is not open source**
- **What is “Open”?**
  - **(Hint: not Open AI)**
  - **Open AI in the generic sense is not yet defined**

# Why Ethical Licensing?

- **Concerns over Freedom 0**
- **Growing power of technology over personal matters**
- **Growing politicization of tech community**



# Ethical Licensing Examples

Example	License	Date	Comments
Stable Diffusion	ML-RAIL	2022	<ul style="list-style-type: none"><li>• Appendix of restricted acts</li><li>• Flow-down requirements are unclear</li></ul>
Various	Hippocratic License	v.3 2021	<ul style="list-style-type: none"><li>• Written by Coraline Ada Ehmke</li><li>• Revised substantially in v2 to track United Nations Universal Declaration of Human Rights</li><li>• v.3 allows customization (and more proliferation)</li></ul>
None?	Anti-996 License	2019	<ul style="list-style-type: none"><li>• More a thought experiment than in actual use</li><li>• Used GITHUB as a platform for discussion</li></ul>
None?	Vaccine License	2019	<ul style="list-style-type: none"><li>• Rejected by OSI</li></ul>
Chef Sugar	“No Tech for ICE” License	2019	<ul style="list-style-type: none"><li>• Demonstrates the ephemeral nature of political controversy</li></ul>
Just launched	AI Open Responsible Use License v.1.0.0 (AI ORUS License).	2023	<ul style="list-style-type: none"><li>• New, alternative to ML-RAIL</li><li>• <a href="https://huggingface.co/spaces/CarlosMF/FAQ-AI-ORUS-License">https://huggingface.co/spaces/CarlosMF/FAQ-AI-ORUS-License</a></li></ul>

# ML-RAIL

## Attachment A

### Use Restrictions

You agree not to use the Model or Derivatives of the Model:

- In any way that violates any applicable national, federal, state, local or international law or regulation;
- For the purpose of exploiting, harming or attempting to exploit or harm minors in any way;
- To generate or disseminate verifiably false information and/or content with the purpose of harming others;
- To generate or disseminate personal identifiable information that can be used to harm an individual;
- To defame, disparage or otherwise harass others;
- For fully automated decision making that adversely impacts an individual's legal rights or otherwise creates or modifies a binding, enforceable obligation;
- For any use intended to or which has the effect of discriminating against or harming individuals or groups based on online or offline social behavior or known or predicted personal or personality characteristics;
- To exploit any of the vulnerabilities of a specific group of persons based on their age, social, physical or mental characteristics, in order to materially distort the behavior of a person pertaining to that group in a manner that causes or is likely to cause that person or another person physical or psychological harm;
- For any use intended to or which has the effect of discriminating against individuals or groups based on legally protected characteristics or categories;
- To provide medical advice and medical results interpretation;
- To generate or disseminate information for the purpose to be used for administration of justice, law enforcement, immigration or asylum processes, such as predicting an individual will commit fraud/crime commitment (e.g. by text profiling, drawing causal relationships between assertions made in documents, indiscriminate and arbitrarily-targeted use).

# Issues with Ethical Licensing

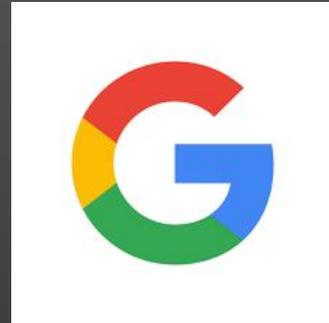
- Copyright remedies may be all that are available, and they are only economic remedies
- Ethics are not consistent over time and cultures, but license terms are forever



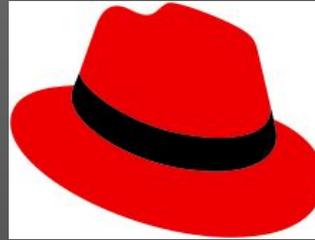


# **Business and Licensing Developments**

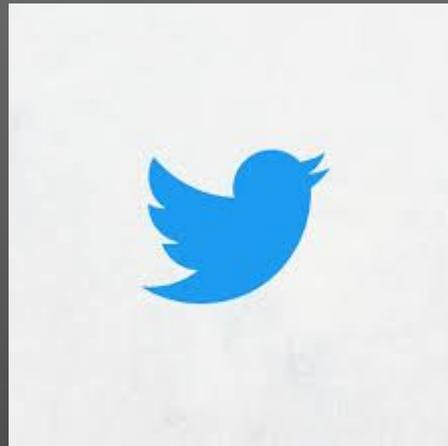
Almost every  
business now  
participates  
in open  
source



**But  
commercial  
open source  
strategy is  
big business**



# Twitter's Algorithm Release



Released the recommendation algorithm:

[https://blog.twitter.com/engineering/en\\_us/topics/open-source/2023/twitter-recommendation-algorithm](https://blog.twitter.com/engineering/en_us/topics/open-source/2023/twitter-recommendation-algorithm)

<https://github.com/twitter/the-algorithm>

# More Resources

- **Blue Oak Council.**  
<https://blueoakcouncil.org/>. Lots of great resources on open source licensing, including a list of permissive licenses.
- **Open Source Initiative.** List of the current approved open source licenses. <https://opensource.org/licenses>
- **SPDX.** A standard format for delivering information about embedded open source, within supply chains. <https://spdx.org/>
- **Open Chain.** A standard for open source compliance, adopted by many top companies.  
<https://www.openchainproject.org/>
- **My video series:** [Open Source Software Licensing - YouTube](#)

# My book

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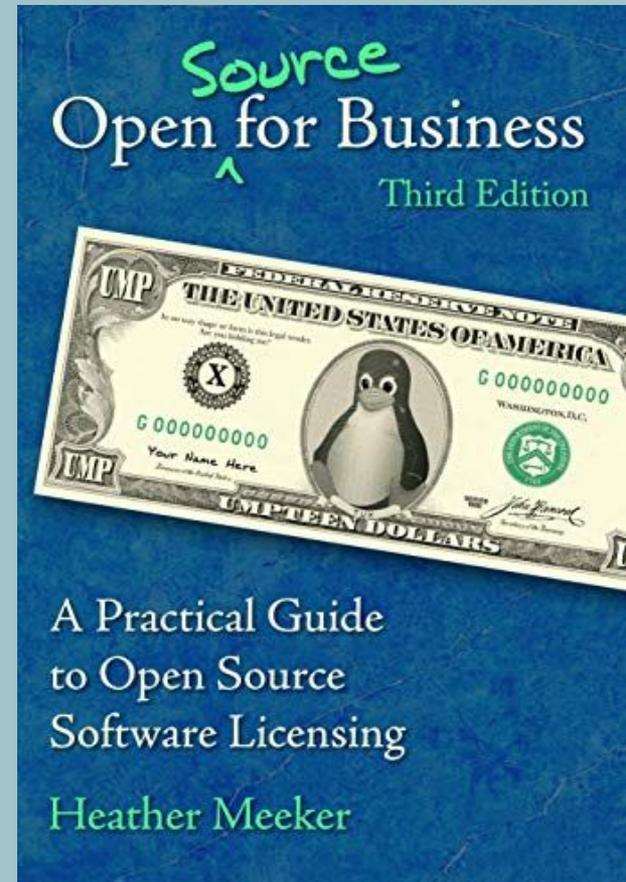
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# Open Source Start-Up Funding

**OSSC**  
— • —  
FOR AN OPEN  
FUTURE

**HEATHER MEEKER**  
**General Partner**  
*[heather@oss.capital](mailto:heather@oss.capital)*

Specializing in early stage open source developers

Fund started October 2018

<https://oss.capital>

See the Commerical Open Source Software Company Index at

[https://docs.google.com/spreadsheets/d/17nKMpi\\_Dh5slCqzLSFBoWMxNvWiwt2R-t4e\\_I7LPLhU/edit#gid=0](https://docs.google.com/spreadsheets/d/17nKMpi_Dh5slCqzLSFBoWMxNvWiwt2R-t4e_I7LPLhU/edit#gid=0)

Thank you!