

Attribution Requirements Free and Open Source Software (“FOSS”) Licensing

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September 2007*

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The author gratefully acknowledges the assistance and thoughtful commentary of Cliff Schmidt, Ira Heffan and Joseph Arruda in preparing this article.

Attribution Requirements in FOSS Licensing

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Most FOSS Licenses Require Some Form of Attribution

At a minimum, most FOSS licenses include a requirement that a licensee redistributing the licensed code, or a modified version of the code, provide a basic copyright (or “copyleft”) notice stating acknowledging the identity of the original author(s). This said, attribution and notice requirements vary widely among licenses.

Many licenses (the GPL and BSD, for example) also include specific requirements as to how notice of the license is to be given. I believe it is helpful to consider this kind of license notice requirement as separate from an “attribution” requirement and will discuss this separately.

Some FOSS licenses include a requirement that each contributor to/licensee of the code provide notice of modifications made by that contributor to each version of the licensed software. Licenses stating such a requirement include the GPL, LGPL, Apache, MPL, CDDL, Perl, AFL and OSL. In contrast, the CPL, BSD, MIT and EPL licenses do not include a requirement that licensees who modify code provide notice of their changes.

Until recently, attribution in FOSS licenses has not been a subject of wide discussion – at least not in legal circles. However, the landscape has changed dramatically in the past year or so. Before we get to discussion of the Recent Past, though, here’s a Bit of History:

The Original vs. the “New” BSD License:

The Original BSD License included this advertising clause:

“All advertising materials mentioning features or use of this software must display the following acknowledgement: This product includes software developed by the University of California, Lawrence Berkeley Laboratory.”¹

This advertising clause was considered by many, including the Free Software Foundation, to be incompatible with open source licensing and, further, that it was not “GPL-compliant”² In 1999, the Director of the Office of Technology Licensing of the University of California officially rescinded the advertising clause in the license

¹ A copy of the Original BSD License can be found at <http://www.xfree86.org/3.3.6/COPYRIGHT2.html#6> and is listed under “UCB/LBL”.

² See <http://www.gnu.org/philosophy/license-list.html>

appearing on BSD Unix files.³ The resulting license, known as the “New BSD License” or the “Modified BSD License”, is equivalent to the MIT License, except for the no-endorsement final clause.⁴ This “New BSD License” currently is listed as a being compliant with the Open Source Definition⁵, as well as qualifying as “free software” licenses that are compatible with the GNU GPL”⁶

The Great Attribution Debates of 2006-2007

The relative silence about what constitutes a proper attribution, and how that attribution should or must be displayed, ended last year. In 2006, an active debate ensued within the FOSS community that focused on the licenses used by approximately one dozen “commercial” and “open source” companies, including that of SugarCRM. These discussions focused on whether licenses used by these ASP-based businesses that included technology-specific attribution requirements were truly “open source” – and more specifically, whether they passed muster as “OSI Certified Open Source Software” licenses.⁷ SugarCRM’s license was at the epicenter of this debate.

Exhibit B of the SugarCRM Public License, v. 1.1.3, stated these “Additional Terms” applying to the “Covered Code” under that License:

This License does not grant any rights to use the trademarks "SugarCRM" and the "SugarCRM" logos even if such marks are included in the Original Code or Modifications.

However, in addition to the other notice obligations, all copies of the Covered Code in Executable and Source Code form distributed must, as a form of attribution of the original author, include on each user interface screen (i) the "Powered by SugarCRM" logo and (ii) the copyright notice in the same form as the latest version of the Covered Code distributed by SugarCRM, Inc. at the time of distribution of such copy. In addition, the "Powered by SugarCRM" logo must be visible to all users and be located at the very bottom center of each user interface screen. Notwithstanding the above, the dimensions of the "Powered By SugarCRM" logo must be at least 106 x 23 pixels. When users click on the "Powered by SugarCRM" logo it must direct them back to <http://www.sugarforge.org>. In addition, the copyright notice must remain visible to all users at all times at the bottom of the user interface screen. When users click on the copyright notice, it must direct them back to <http://www.sugarcrm.com>⁸

³ See <ftp://ftp.cs.berkeley.edu/pub/4bsd/README.Impt.License.Change>

⁴ See <http://opensource.org/licenses/bsd-license.php>

⁵ At <http://opensource.org/licenses>

⁶ Listed as the “Modified BSD License” at <http://www.gnu.org/licenses/license-list.html#SoftwareLicenses>

⁷ This is a trademark of the Open Source Initiative, which indicates that the respective license has been approved as a license meeting the requirements of the Open Source Definition. An important note here is that whether a license is “open source” can be and remains a separate question from whether the license is “OSI Certified Open Source Software”. This distinction will be covered in a separate article. Over time, these definitions may turn out to be one and the same, or completely different. For now, they are used in different ways and for different purposes within the FOSS Community.

⁸ See <http://www.sugarcrm.com/crm/open-source/public-license.html>

Heated discussion ensued on the OSI list about whether these Additional Terms conformed or not to accepted definitions of “open source” and, in particular, whether they complied with Section 10 of the Open Source Definition. OSD Section 10 prohibits an OSI-certified license from being “predicated on any individual technology or style of interface”⁹ The specific requirements as to how the SugarCRM attribution were to be displayed were attacked as non-compliant with the OSD. Rick Moen described the issue this way:

A number of Web 2.0 firms . . . don't wish to cut loose from their open source roots, and (commendably) wish to have their offerings qualify as open source, but at the same time want to give themselves a business advantage over any commercial competitors reusing their published source code on competing sites. A couple of years ago, they found their chosen tool: An "Exhibit B"-clause modification to the Mozilla Public License v. 1.1 (penned originally by the SugarCRM company, then copied by an increasing number of others) -- dubbed by critic Bruce Perens a "badgeware" clause and by its proponents an "attribution" provision, requires any reuse or derivative work to sport the original sponsoring company's advertising logo on every single user interface screen. . . .¹⁰

The question "Is it really open source?" was asked over and over on the OSI license-discuss list. In a somewhat surprise move, in mid-February of 2007, SugarCRM, began dual licensing its latest version under the Microsoft Shared source license: <http://www.linux-watch.com/news/NS4362103134.html> and the MPL. But . . . shortly before that, Socialtext had submitted a new license for OSI approval, leading to this comment from OSI Board President Michael Tiemann:

The license-discuss list has been full of discussion, but that discussion has not yet been reduced to a coherent argument either for or against. Rather, we have heard many many opinions as to what one person does or doesn't like about the Socialtext license, attribution in general, or positions that others have advanced for or against either topic. . . .One way or another, the Board owes Socialtext and the open source community a ruling, and we'd like to do as good a job as we can.”¹¹

A classic comment against the “badgeware” licenses was made by Chris DiBona:

SugarCRM is not flippin' Open Source. If a company requires you to add a badge at the bottom of a page to use their software (which they do), and that badge is a trademarked logo (which it is), and they can and have kept people from using the logo, which prevents the use of the software, then it's not open source. GPL + attribution requirements that include trademarks == total control over use.

I wouldn't mind at all, but SugarCRM continues to bill themselves as "commercial open source". They are not open source, commercial or otherwise. Freeware or Shareware maybe. Professional Service ware, for sure. But Open Source? Nope.¹²

As counter-point, Ross Mayfield provided this view of the history and basis for approval of the license submitted by Socialtext:

⁹ See <http://www.opensource.org/docs/osd>

¹⁰ Moen, Rick in “OSI, GAP and “Exhibit B” licences” in Issue 134 of the Linux Gazette, January 2007.

¹¹ See Michael Tiemann's email submission to license-discuss@opensource.org of January 19, 2007

¹² See Chris DiBona's archived blog at http://www.pkblogs.com/egofood/2007_02_01_archive.html

I am running a software company and my experience is that, without attribution, “everyone” will not know who made our software. . . I am working to make Socialtext available to the community every day and I know that I need this flexibility. And I know that I am not alone in this view: attribution has been adopted by over 12 application companies. We are seeking to provide a “template” license to meet this need. We respect OSI and its process: we have worked with License Discuss for over eight months and have made numerous changes to our proposed license. . .”¹³

As the debate raged, SugarCRM and other companies announced their migration to the GPL. In the meantime, the new GPL 3.0 was subsequently released on June 29, 2007.¹⁴

OSI Approval of the CPAL License

In July of 2007, after a lengthy debate on the OSI list, the OSI approved the Common Public Attribution License. This license, based on the MPL v 2.0, includes “Additional Terms” relating to attribution requirements. A key difference between these “additional terms” and those previously submitted is that the CPAL allows for flexibility as to the “how” proper attribution is done. Rather than including specific technical constraints that are “predicated on any individual technology or style of interface”¹⁵, this license acknowledges that “alternative forms” of attribution may be used.¹⁶

¹³ Submission to license-discuss@opensource.org by Ross Mayfield on June 26, 2007.

¹⁴ See <http://www.gnu.org/licenses/gpl.html>

¹⁵ See OSD Section 10 at <http://www.opensource.org/docs/osd>

¹⁶ Section 14 of the Common Public Attribution License v.1.0 (CPAL) reads as follows:

14. ADDITIONAL TERM: ATTRIBUTION

(a) As a modest attribution to the organizer of the development of the Original Code (“Original Developer”), in the hope that its promotional value may help justify the time, money and effort invested in writing the Original Code, the Original Developer may include in Exhibit B (“Attribution Information”) a requirement that each time an Executable and Source Code or a Larger Work is launched or initially run (which includes initiating a session), a prominent display of the Original Developer’s Attribution Information (as defined below) must occur on the graphic user interface employed by the end user to access such Covered Code (which may include display on a splash screen), if any. The size of the graphic image should be consistent with the size of the other elements of the Attribution Information. If the access by the end user to the Executable and Source Code does not create a graphic user interface for access to the Covered Code, this obligation shall not apply. If the Original Code displays such Attribution Information in a particular form (such as in the form of a splash screen, notice at login, an “about” display, or dedicated attribution area on user interface screens), continued use of such form for that Attribution Information is one way of meeting this requirement for notice.

(b) Attribution information may only include a copyright notice, a brief phrase, graphic image and a URL (“Attribution Information”) and is subject to the Attribution Limits as defined below. For these purposes, prominent shall mean display for sufficient duration to give reasonable notice to the user of the identity of the Original Developer and that if You include Attribution Information or similar information for other parties, You must ensure that the Attribution Information for the Original Developer shall be no less prominent than such Attribution Information or similar information for the other party. For greater certainty, the Original Developer may choose to specify in Exhibit B below that the above attribution requirement only applies to an Executable and Source Code resulting from the Original Code or any Modification, but not a Larger Work. The intent is to provide for reasonably modest attribution, therefore

What have we learned from all of this, aside from the fact that the Great Debates on Attribution likely are not over? Perhaps that rapidly and constantly-changing technology requires flexibility in licensing, the law, and in life.

“For the times they are a-changin’!

*. . . Admit that the waters around you have grown
And accept it that soon you’ll be drenched to the bone. . .
You better start swimmin’ or you’ll sink like a stone. . .”¹⁷*



the Original Developer cannot require that You display, at any time, more than the following information as Attribution Information: (a) a copyright notice including the name of the Original Developer; (b) a word or one phrase (not exceeding 10 words); (c) one graphic image provided by the Original Developer; and (d) a URL (collectively, the “Attribution Limits”).

(c) If Exhibit B does not include any Attribution Information, then there are no requirements for You to display any Attribution Information of the Original Developer.

(d) You acknowledge that all trademarks, service marks and/or trade names contained within the Attribution Information distributed with the Covered Code are the exclusive property of their owners and may only be used with the permission of their owners, or under circumstances otherwise permitted by law or as expressly set out in this License.

¹⁷ Bob Dylan