



삼성 오픈소스 컨퍼런스
SAMSUNG OPEN SOURCE CONFERENCE

오픈소스 라이선스의 이해와 분쟁 사례

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오픈소스 소프트웨어는 무엇인가?

- 자유 - 누구의 자유, 사용, 수정, 재배포의 자유와 한계
- 공짜배포 - 유료판매, 관련 서비스의 유료화 허용 여부
- 코드의 공개 - 무엇을 어느 범위까지?
- 공유와 기여 - 공유자와 기여자는 누구?
- 저작권 - 보호가능여부, 보호범위
- 라이선스 계약 - 계약체결여부, 보호범위
- 적용법률과 관할법원 - 어느 국가의 법, 어느 국가의 법원?

소프트웨어 발전 역사

- 하드웨어 + 소프트웨어의 번들 판매
 - 1969 미국 법무부 v. IBM의 반독점 소송 → IBM 패소
- 상용 독점적 소프트웨어 분리 판매
- 프리/오픈소스 소프트웨어 등장: 사용자의 복제, 수정, 배포,
재배포 자유 보장 주장
- 비즈니스 모델은?

프리/오픈소스 소프트웨어의 철학

- 사용자에게 소프트웨어 복제, 수정, 배포, 재배포의 자유보장
- 공유와 기여의 선순환 구조
- 수학의 공리에 저작권 주장없듯이 소프트웨어의 사유에 반대
 - Richard Stallman
- “Be Benefactor or Symbiote, not Parasite!”
 - Bruce Perens, OSI의 공동설립자

프리/오픈소스 소프트웨어의 정의

- 프리 소프트웨어의 정의 – Free Software Foundation 제정
 - 4가지 Freedom to...
 - Run for any purpose
 - Study and change
 - Redistribute
 - Distribute modified version

프리/오픈소스 소프트웨어의 정의

- 오픈소스 소프트웨어의 정의 – Open Source Initiative 제정
 1. Free Redistribution
 2. Source code
 3. Derived Works
 4. Integrity of The Author's Source Code
 5. No Discrimination Against Persons or Groups
 6. No Discrimination Against Fields of Endeavor
 7. Distribution of License
 8. License Must Not Be Specific to a Product
 9. License Must Not Restrict Other Software
 10. License Must Be Technology-Neutral

Top 20 Open Source Licenses

The table below illustrates the **top 20 licenses** that are used in open source projects. The projects that were analyzed to produce this list are tracked in the [Black Duck Knowledgebase](#), reflecting the many forges, foundations and organizations that make up the overall open source community.



Please click on a license name for more information.

Rank	License	%
1.	GNU General Public License (GPL) 2.0	27%
2.	MIT License	16%
3.	Apache License 2.0	15%
4.	GNU General Public License (GPL) 3.0	11%
5.	BSD License 2.0 (3-clause, New or Revised) License	7%
6.	Artistic License (Perl)	5%
7.	GNU Lesser General Public License (LGPL) 2.1	5%
8.	GNU Lesser General Public License (LGPL) 3.0	2%
9.	http://www.opensource.org/licenses/ms-pl	2%
10.	Eclipse Public License (EPL)	2%
11.	Code Project Open License 1.02	1%
12.	Mozilla Public License (MPL) 1.1	< 1%
13.	BSD 2-Clause License+	< 1%
14.	Common Development and Distribution License (CDDL)	< 1%
15.	Microsoft Reciprocal License	< 1%
16.	Sun GPL With Classpath Exception v2.0	< 1%
17.	CDDL-1.1	< 1%
18.	AGPL-3.0+	< 1%
19.	zlib/libpng License	< 1%
20.	Common Public License (CPL)	< 1%

상업라이선스와 오픈소스 라이선스의 비교

공통점 : 이용허락계약

상업

- 라이선서/라이선시
대립구조
- 유료
- 협상을 통한 계약
- 진술, 보증
- 배상책임
- No Copyleft

오픈소스

- 라이선서/라이선시
순환적 feedback 구조
- 무료
- No 협상 - "AS IS 계약"
- No 진술, 보증
- No 배상책임
- Strong/ Weak/ Non-Copyleft

오픈소스 라이선스의 유형

Copyleft의 강도 기준

Strong Copyleft 라이선스 Weak Copyleft 라이선스 Non-Copyleft 라이선스

- GPL
- AGPL

- LGPL
- MPL

- APACHE
- MIT, BSD

Copyleft란 무엇인가?

- 불특정 Downstream Future 사용자(모든 사람)의 자유
지속적 보장 위한 Share-alike 장치 :

소스코드의 공개의무 + 원저작물과 동일한 라이선스 적용의무

오픈소스 라이선스의 기본구조와 내용

서문: 철학과 취지

■ 이용자 보호규정:

- 자유 복제, 수정, 배포 조항
- 소스코드의 배포 / 배포 서면청약 / 청약정보 고지

■ 저작자 및 기여자 보호규정:

- 저작권고지, No Warranty, No Indemnification, 해제조항

■ 오픈소스 자체 및 커뮤니티 보호규정:

- Copyleft 조항
- 특허 허여 / 특허 보복 조항

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- 용어: 각 라이선스별 공통된 용어도 있으나 상이한 용어도 있음
 - 공통: Copy, Modify, Contributor, Program, Derivative Work
 - 상이: Distribute / Convey / Propagate
- 법적 의미: 각 국가의 저작권법, 계약법에 따라 해석
 - 한국법에 의한 영문용어의 해석,
저작권, 계약상 권리, 라이선스 위반의 효과 연구필요

- **GPL(General Public License)**
 - **Copyright Notice/ License Distribution**
 - **Grants right to copy, modify and distribute**
 - **Requires source code available to future licensees**
 - **Generally Seen as “Viral”**
 - **applies to works that are COMBINED or LINKED with distributed code**
 - **Work Based on the Program > Derivative**
 - **Disclaims Warranties and Indemnification**
 - **May blow-up in face of patent assertion**

- LGPL

- Similar to GPL : Work based on the Library
No Warranty, No Indemnification
- Viral Effect 전염성 범위 축소 :
may distribute the combination of LGPL Library
and "Work that Uses the Library" under other license
- Source Code의 공개범위
LGPL Library와 Linking된 프로그램은 방식에 따라 차이
Static
Dynamic

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 - A copy of the license must be redistributed along with any Apache software.

- 오픈소스 라이선스 계약에 의한 보호
 - Governing Law: 어느 국가의 법
 - Jurisdiction: 어느 국가의 법원
 - 계약의 성립: 청약과 승낙은 언제? 어떻게?
 - 밀접한 관련있는 국가의 법에 따라야

■ 저작권법에 의한 보호

A. 오픈소스 저작물의 유형

공동 저작물/ 결합저작물/ 2차적 저작물/
업무상 저작물

B. 저작재산권

복제권/ 공중 송신권/ 배포권/ 대여권

C. 저작인격권

D. 보호기간 및 등록

- 부정경쟁방지법상 영업비밀로서 보호
- 특허권에 의한 보호
- 형사적인 보호
 - A) 저작권침해죄의 친고죄성 완화
 - B) 양벌규정

저작권 표시

전문

복제와 개작 및 배포에 관한 조건과 규정(제0조-제10조)

보증의 결여(제11조,제12조)

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[copyleft principle]

downstream

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[보호 법 체계] : 저작권 침해와 라이선스 계약 위반의 법적 효과 인정 / 저작권 인정 범위

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공동, 결합, 2차적 저작물 등

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위반 관련 분쟁 사례
- Versata v. Ameriprise
- GPL enforcement by Patrick McHardy

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- 관습상 승낙으로 볼 수 있는 행위?

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[강행법규상 면책제한규정 우선 적용] – 약관법

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[준거법, 재판관할규정의 부존재]

저작권 표시

사용, 재생산과 배포를 위한 규정과 조건

1. 정의
2. 저작권 이용허락부여
3. 특허이용허락부여
4. 재배포
5. 기여물의 제출
6. 상표권
7. 보증 거절
8. 책임의 제한
9. 보증 또는 추가 책임의 부담

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