

To: UCLA Academic Community

From: Kathryn Atchison, Vice Provost, Intellectual Property and Industry Relations
Jim Davis, Associate Vice Chancellor, Information Technology
Kevin Reed, Vice Chancellor, Legal Affairs

Date: July 31, 2009

Re: Open Source Software

UCLA is increasingly making use of Open Source Software (OSS) for a variety of purposes. Examples range from CCLE/Moodle, UCLA's course management system, to applications running in various labs.

Open Source Software is licensed. Non-compliance entails serious ethical, legal and financial risks. Thus, UCLA's use of any OSS product must comply with the terms of that license. Some OSS licenses contain terms and conditions that are not acceptable for use with UCLA projects.

It is critical to understand the legal restrictions associated with the use of an OSS product and how those restrictions apply to intellectual property that a user or another UCLA employee may create, whether as software code contributed to the OSS project, or as inventions that depend on that OSS product. Different and specific rules apply to faculty, employed students, or staff members depending on whether their use of OSS is:

- As an integral element or necessary component of a research activity;
- As part of an institution-sanctioned open source project;
- As (potential) contributor to a specific open source project; or,
- As "casual user," with no intent to contribute to the open source community or to redistribute the code in any way.

A brief synopsis of the issues in common UCLA situations is provided in the OSS Usage Scenarios section to this memorandum. Additional information, including an in-depth discussion of relevant factors, can be found at:

http://www.softwarecentral.ucla.edu/OSS_White_Paper.pdf.

Distributions of new OSS projects or contributions of new or improved software code to an OSS project on behalf of UCLA require: i) confirmation that the contribution was solely created by UCLA representatives; ii) assurance that it is free of any prior

conflicting license or sponsorship obligations; iii) review that the OSS license does not contain unacceptable terms and conditions (e.g. GNU 3.0, Apache 2.0); and iv) determination that it does not contain intellectual property for which UCLA wishes to retain exclusive rights.

We will be working during fiscal year 2010 to develop an UCLA policy on OSS. This policy will be reviewed by the Academic Senate, Information Technology Planning Board and UCOP. We hope that you will provide your input as we vet the process for managing OSS at UCLA.

In the interim, the Office of Intellectual Property and Industry Sponsored Research (OIP-ISR), the Office of Information Technology (OIT) and the Office of Legal Affairs have developed a process by which UCLA-developed software code may be appropriately contributed to OSS projects and OSS may be considered as a purchasing option for institutional solutions.

The contribution process includes filing an Open Source Contribution Form with OIP-ISR for software so that faculty, students or staff members may contribute on behalf of UCLA. The form is available online at:

<http://www.research.ucla.edu/oipa/faculty.htm#copyright>.

For questions related to completing the form, please contact Katherine Fibiger, OIP-ISR Copyright Officer, at kfibiger@research.ucla.edu. Questions about terms and conditions of a particular license, assistance in preparing an RFP, and evaluation criteria should be addressed to Tom Trappler, Director of Software Licensing, at trappler@oit.ucla.edu.

OSS Usage Scenarios

The following scenarios are intended to serve as examples of common types of OSS usage at UCLA. Although each “real” situation will probably be different from these sketches, they highlight potential conflicts between OSS use, UC Policy and the individual’s goals in using the product that might need to be adjudicated.

- The desire (or obligation) of the faculty, student or staff member to make work product available and individual’s UCLA conditions of employment that transfer ownership to The Regents;
- The individual’s desire to contribute to an OSS project and prior UC patent, license, or sponsorship restrictions that may be in place;
- The desire to commercialize an invention and restrictions that some open source licenses place on doing that; and,
- The stipulations of the open source license and the intended use.

These scenarios provide guidance, but the potential contributor of intellectual property has the ultimate responsibility for complying with UCLA policies. Assistance is always available from OIP-ISR to resolve individual questions.

Special considerations apply when issuing an RFP for a solution in which OSS is a possible solution along with commercial packages. The Director of Software Licensing (trappler@oit.ucla.edu) can assist in preparing such RFPs and the evaluation criteria.

OSS In Research

In this case, a faculty member or graduate student wants to incorporate parts of an existing OSS product into new software being developed. While faculty, as designated academic employees, own the copyright for their academic scholarship, the copyright of employed graduate students and other UCLA employees is owned by The Regents. Areas of concern to both the faculty member and UCLA include:

Is the faculty member's research funded by an external agency? If so, are there any conflicts between the terms of the OSS license and the terms associated with the external funding? The issues will be different depending upon the source of the external funding (federal, private).

Does the OSS license include terms and conditions that include restrictions on the rights granted, or a granting of rights to patented technology that may use the OSS product?

Is there an intention and/or requirement for the new software under development to be commercialized? If so, do the terms of the OSS product's license allow for it to be incorporated into and sold as part of a proprietary product? For example, a Reciprocal License could significantly limit the ability to commercialize that new software.

- 1. All OSS licenses should be carefully evaluated prior to being incorporated into new works developed at UCLA to ensure that the license terms are compatible with the goals and requirements of the research. OSS licenses that include unacceptable terms and conditions (e.g. GNU 3.0, Apache 2.0) may not be used for UCLA activities without the license being amended and approved by OIP-ISR or Campus Counsel.*
- 2. Clearance from OIP-ISR is required prior to making any software code available other than as a contractual deliverable of a grant or research contract to any outside entity. The individual must complete an Open Source Software Contribution Agreement, available on the OIP-ISR website at: <http://www.research.ucla.edu/oipa/faculty.htm#copyright>, as well as submitting the original hard copy as instructed on the form.*

Institutional Participation in a Community Source Project

In this scenario, UCLA determines through CITI, FCET or IDRE that participating in an open source community is the most viable or appropriate solution to meet a particular software need. By opting to participate in such projects (e.g., Moodle, Shibboleth, Quali), we are sharing the development burden and risks associated with such a large scale undertaking. **By its decision to actively participate as an institution in the community, UCLA has stated that contributing to the community is in the best interest of the institution.** The OSS license has been reviewed by university attorneys and determined to be appropriate.

Code contributions should be listed on the Open Source Contribution form by the developer(s). The form for making this affirmation is available on the OIP-ISR website at: <http://www.research.ucla.edu/oipa/faculty.htm#copyright>.

Institutional Solution — Contribution Possible

Occasionally, the need for a UCLA-wide software solution is identified and an RFI/P/Q is developed to evaluate and determine the best software product to meet this need. Current procurement practices were developed primarily to evaluate proprietary products. **Appropriate RFP language and evaluation criteria must be added to the RFP to ensure that the procurement process provides an objective evaluation of both proprietary and open source responses.** The Director of Software Licensing (trappler@oit.ucla.edu) can assist in preparing such RFPs and the evaluation criteria.

UCLA should carefully decide what level of involvement we will have with the developer community around that OSS product. Although there may be no initial intent to contribute code to the open source community, the implications of the license should be reviewed so that the purchasers fully understand the cost to UCLA staff of maintaining the application. Incidental contributions of code are subject to the IP contribution review process.

Infrastructure or Application — No Intent to Contribute

This situation covers common and well established OSS products, such as Linux, Apache Server, or OpenOffice. The department's IT staff may possess a sufficient level of knowledge to develop customized code based upon the OSS product that could be contributed back to the community, but is unlikely to do so because the OSS product has been adopted solely for use as a solution to a specific and common infrastructure need. A determination is made that no need or goal to customize the OSS product exists, and any benefit that could accrue to the department from contributing is minimal. No OIP-ISR review or input is required for the decision to use the product, but contributions are subject to the Open Source Software Contribution Agreement Form review process.

End User “Casual Downloads”

In this scenario, no IT professionals are involved. For example, a department administrative assistant may decide to use Firefox, an open source product, as his Internet web browser. The act of downloading, installing and using Firefox automatically means that the individual has agreed to the terms of the Mozilla Public License. Even if the individual were to do software programming as a hobby in his spare time, the fact that his job responsibilities are not IT related would make it clear that any potential contribution was on behalf of the individual and not as a representative of UCLA. The contribution may NOT be made on behalf of UCLA or using UCLA computers and no UCLA review or input mechanisms are warranted.