
TABLE OF CONTENTS

Abbreviations		VIII
One	Introduction	1
Two	Origins of Open Source	5
2.1	Background: The Open Source Licence Environment	6
2.1.1	Technological background: source code and object code	6
2.1.2	Technological background: the structure of a computer programme	7
2.1.3	Philosophical background	7
2.1.4	The GNU: General Public Licence	8
2.1.5	The BSD distribution	11
2.1.6	The Mozilla Public Licence	13
2.1.7	The Open Source Definition	14
2.2	The Core Stipulations of Open Source Licences	15
2.2.1	The use of different licences	15
2.2.2	Freedom as a key requirement	17
2.2.3	The importance of openness	18
2.2.4	The share-alike clause: an important ingredient of open source licences (copyleft)	21
Three	Open Source in Practice	25
3.1	The Production of Open Source Software	25
3.1.1	The layered structure of OSS production	27
3.1.2	The status of OSS developers: employed, freelancer, student and unemployed	31
3.1.3	Dutch contributions to open source projects	32
3.2	The Distribution of OSS in Practice	32
3.2.1	On-line distribution	33
3.2.2	Off-line distribution	36
3.3	The Use of Open Source Software	37
3.3.1	Considerations with respect to the use of open source licences	37
3.3.2	Governments	39

3.3.3	Businesses	42
3.3.4	Individual users	43
3.3.5	Organizations	43
Four	Open Source and Private Law	45
4.1	Nature of the Agreement	46
4.2	Parties to the Agreement	51
4.3	Formation of Contract	55
4.3.1	Offer and acceptance	56
4.3.2	Core stipulation of the agreement	61
4.3.3	Standard form contracts	63
4.3.4	Applicability of open source licences	67
4.4	Share-alike Clause (Copyleft)	72
4.5	Warranty Disclaimer	78
4.6	Limitation of Liability	80
4.6.1	Restriction and disclaimer of liability under Dutch law	81
4.6.2	Standard form contract	83
4.7	Termination of Contract	86
Five	Open Source and Copyright Law	89
5.1	Authorship/Ownership	90
5.1.1	Joint authorship	91
5.1.2	Work created under employment	95
5.2	Exploitation Rights under Open Source Licence	98
5.2.1	Freedom to use	100
5.2.2	Freedom to reproduce	105
5.2.3	Freedom to modify	107
5.2.4	Freedom to (re)distribute	110
5.2.5	Royalty free distribution	117
5.2.6	Regulation of exploitation contracts	120
5.3	Moral Rights under Open Source Licence	122
5.3.1	Right of first publication	124
5.3.2	Right of paternity	125
5.3.3	Right of integrity	126
5.4	Dual Licensing	129
Six	Open Source and Patent Law	131
6.1	Software Patents in the Netherlands	133
6.1.1	Current legal framework	134

6.1.2	Proposed EC Directive on the patentability of computer-implemented inventions	139
6.2	Open Source and Patented Software	142
6.2.1	Open source patenting strategy	144
6.2.2	Open source licences	145
Seven	Enforcement of Open Source Licences	149
7.1	Standing to Sue	150
7.2	Enforcement in Practice	157
Eight	Concluding Remarks	163
Nine	Practical Recommendations	169
9.1	Recommendation 1: Name the Parties to the Contract	169
9.2	Recommendation 2: Ensure Proper Formation of Contract	169
9.3	Recommendation 3: Clarify the Copyright Ownership	170
9.4	Recommendation 4: Clarify the Scope of the Share-alike Clause	171
9.5	Recommendation 5: Review the FSF Europe Fiduciary Licence Agreement	171
	Annexes	173
1.	GNU General Public License	173
2.	BSD and MIT	180
3.	Mozilla Public Licence (MPL 1.1)	181
4.	Fiduciary Licence Agreement (Version 1.0)	191
	Bibliography	195
	Monographs and reports	195
	Cited case law	207
	Index	209