

Enforceability of free/open source software licensing terms: A critical review of the global Case - Law

By Thanos K. Tsingos

Abstract

Free/Open source software (FOSS) undoubtedly constitutes a unique movement that has reformed the basic marketing standards of the IT industry. The drafters of the FOSS project have - however - “imposed” their own “innovative” and “challenging” terms, under which such software may be licensed and farther managed.

At the beginning, the enforceability of those licensing terms in the light of the traditional copyright law system remained a much questionable issue to be resolved. But the second decade of the 21st Century reveals that many FOSS licensing terms have been regarded as “enforceable” before the Courts, inasmuch the relevant case law around the world suggests. Thus, despite the different legal traditions among the nations in terms of Copyright Laws, this paper discusses the aforementioned issue, taking into account segmental examples of the global Jurisprudence.

In the abovementioned context, PART I discusses the basics about computer software and the free/open source software movement and provides a brief analysis on the legal protection of computer programs by copyright, the traditional copyright licensing schemes and the newly introduced F/OSS licensing terms and conditions. In Part II, the author offers a wide description of the existing case law in terms of validity and enforceability of those F/OSS licensing terms both in the USA and within the borders of the EU, in the factual context of each single case. Finally, in Part III a review of the existing case law will take place in terms of copyright, thereby comparing the legal approaches that seem to have followed by the two continents from which the jurisprudence derived: the USA and the EU and reaching to some useful conclusions thereto.