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## GPL Version 3 Has Arrived! Now What?

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On Friday, June 29, 2007, the [GNU General Public License \(GPL\)](#)—allegedly the world’s most widely deployed software license—was updated, more than sixteen years after the release of the previous version. The long-awaited release of Version 3 of the GPL came after an eighteen-month public comment and discussion period during which input was provided by participants representing a diverse array of commercial and non-commercial interests from around the world.

### **What is the GPL?**

The GPL is a software license agreement intended for use with open source code software. The author of a piece of software that he or she wishes to distribute on an open source basis (i.e., making the source code generally available to the public) can choose to do so under the GPL or another form of open source license (more than fifty of these are listed at [www.opensource.org/licenses](http://www.opensource.org/licenses)).

If the author chooses to distribute software under the GPL, then every distributor of that software, or any software that is derived from that software, must also do so under the GPL, and must make the source code available to the public. The GPL contains a number of restrictions that ensure the continued free availability of the GPL code and other works “based on” the GPL code.

Many important open source applications are distributed under the GPL. These include the Linux operating system, the Firefox browser and the MySQL database. Nevertheless, companies are sometimes wary of incorporating GPL software into their proprietary products due to the perceived “viral” character of the GPL.

Version 1 of the GPL was published in 1989 by Richard Stallman, founder of the Free Software Foundation (FSF), which acts as custodian of the pervasive open source code license. He released Version 2 in June of 1991. Friday’s release of Version 3 represents the first update to the GPL since 1991.

### **What Changed?**

Version 3 of the GPL retains many of the basic characteristics of Version 2. However, it also introduces a number of changes that reflect both clarifications of the prior version’s language and

new features prompted by the evolution of the software industry over the last sixteen years. Among the more significant changes are the following.

*Patent Licensing.* Although GPL version 2.0 did not contain an express patent license, many have argued that it implicitly required distributors of GPL code to license their patents to recipients of that code. Version 3.0 now expressly prohibits distributors of GPL code from bringing patent infringement claims against users of that code. The new license also prohibits distribution of GPL code by any company that pays for a “discriminatory” patent license that would benefit its own customers using such GPL code, but not others. This restriction was developed by FSF in response to the settlement reached by Microsoft and Novell in 2006, under which Microsoft agreed, in exchange for payments from Novell, not to assert patents against customers of Novell’s SUSE Linux product. Although licenses entered into prior to March 28, 2007 are not affected, future transactions in which a patent holder agrees not to sue another party’s customers for use of GPL software will be constrained by this prohibition.

*“Tivoization.”* “Tivoization” is a term coined by Richard Stallman to signify a practice whereby a system that includes open source software uses hardware to prevent the modification of that open source software. The practice first came to the widespread attention of the open source community when TiVo, the manufacturer of a popular digital video recorder running numerous GPL programs, caused its devices to cease functioning when modifications were made to their internal software. GPL 3.0 now expressly prohibits tivoization by requiring that any GPL software distributed in a “consumer product” must be accompanied by “installation information” adequate to enable modification of the GPL software and to prevent any interference with its operation as a result of such modification. This requirement does not apply when GPL software is distributed in a form that cannot be updated by the vendor, such as software installed in ROM (read-only memory).

*Digital Rights Management (DRM).* The US Digital Millennium Copyright Act and similar non-US laws prohibit the intentional circumvention of technological measures designed to prevent illegal access to or copying of a copyrighted work. Such measures include “digital rights management” (DRM) technology that controls the nature and extent of copying that is permitted for digital files. This technology is being used increasingly to protect music, video and other forms of digital content. The “anti-circumvention” rules that make “cracking” DRM and other protective measures illegal have been heavily criticized by the FSF and members of the open source community. GPL 3.0 requires any person distributing GPL software to waive any potential claim under anti-circumvention laws with respect to the product containing the GPL software, and to acknowledge that GPL software cannot, by definition, constitute part of a technological measure preventing such access or copying.

*Additional Terms.* Version 2 of the GPL prohibited the imposition of any additional restrictions on the recipient’s use of software distributed under the GPL. Under Version 3, a distributor of GPL code may include additional licensing terms relating to warranties, publicity, trademarks, indemnifications and certain other matters.

*Termination Cure Period.* Any violation of the material terms of GPL Version 2 resulted in automatic termination of the license. This remedy was viewed by many users as draconian. Version 3 of the GPL now gives first-time violators a 30-day “cure” period to rectify any violations and thereby have

their GPL license reinstated.

### **What is Affected by These Changes?**

Copies of software distributed under Version 2 of the GPL will continue to be licensed under Version 2, and will not be affected by the release of GPL Version 3.

The copyright owners of software currently licensed under GPL Version 2 (or any other open source license) must decide whether to “upgrade” to GPL Version 3. If they do so, future copies of that software will be distributed under Version 3. However, there is no general requirement that copyright owners upgrade to Version 3. In fact, several notable open source proponents, including Linus Torvalds, the originator of the Linux project, have criticized GPL Version 3 and have stated their intention not to adopt it.

### **The LGPL Follows Suit**

Together with Version 3 of the GPL, on Friday the FSF released a new version of the so-called “Lesser” or “Library” GPL (LGPL). Version 2.1 of the LGPL was released in 1999, and an effort has been made to integrate it more closely with the GPL. [Version 3 of the LGPL](#) is structured as an add-on to the GPL for certain software libraries, rather than a separate and distinct license agreement.

### **What’s Next? The AGPL and More**

Even though Version 3 of the GPL has now been published, the FSF will remain busy with a host of related projects, including projects relating to the [“Afero” GPL \(AGPL\)](#) and updated “Free Documentation” licenses.

The youngest member of the GPL family, and less well-known than the GPL and the LGPL, the AGPL was first published in 2002 by the Affero open source project, and will now be updated to be compatible with Version 3 of the GPL. Affero developed the AGPL to close the so-called “ASP loophole” that allowed companies to make GPL software functionality available over a network without having to release the source code (because the GPL source code release requirements only apply to software that is “distributed,” but not software that is accessed remotely without being distributed). The AGPL is identical to the GPL, with the addition of a clause that extends the GPL source code provisions to software that is accessed over a network. Under this license, ASP and hosting providers who make modified versions of AGPL software available over the Internet are required to release the source code of this software, as well as any modifications and derivative works, to users who access it.

These additional projects are likely to be concluded by the end of 2007, after which the broader software community will determine how successful this landmark update of the GPL will prove to be.

For more information on this or other technology transactions and licensing matters, please contact the authors listed above.