distribution

malcolm bain
id law partners
barcelona

Brussels,
9th December, 2009
distribution

- freedom 2: “The freedom to redistribute copies … “
- freedom 3: “The freedom to … release your improvements (and modified versions in general) to the public."
3 questions

- **Legal uncertainty**
  - “Public communication” (US/EU wording)
  - Copyleft obligations (when is a distribution not a distribution?)

- **ASP loophole**
  - Remote services: no distribution for copyleft
tangible and intangible distribution

- **distribution**
  - *the transfer of a copy of the work in tangible form*

- **public communication**
  - *the making available to the public .... in such a way that members of the public may access them from a place and at a time individually chosen by them*
license wording… 1980s

- BSD, MIT, Apache, GPLv2
  - You may copy and distribute …
  - Redistribution …is permitted
  - Permission is hereby granted … to distribute ….copies of the Software
license wording ...2000s

- OSLv3, GPLv3, EUPL 1.1
  - a license... to distribute or communicate copies of the Original Work and Derivative Works to the public
  - to “propagate” a work
  - a right to... communicate to the public ... distribute the Work
When is distribution not a distribution... or when *should* distribution not be a distribution?

- **GPLv2 terms on “distribution”**
  - Use the same license
  - Provide source code
- **inadvertant distributions**
  - Contractors
  - Mergers/acquisitions
  - Sales
copyleft obligations

• solutions – draw a clear line
  – “You”/”Licensee” = you and corporate entity / controlled or managed entities
  – GPLv3: no propagation for contractors
ASP loophole

- cloud computing – remote network access to software functionalities
  - No distribution
  - Users don’t have access to code under free software license
  - Loss of *copyleft* pooling effect
ASP loophole

- ASP licenses
  - OSL v3: network use is an “external deployment” and thus distribution
  - Affero GPL: remote network interaction
  - EUPL: providing access to essential functionalities
conclusions

• some issues over “distribution”
• greater certainty established by latest version of licenses

⇒ use the latest licenses!
  – GPLv3
  – EUPL 1.1
  – OSLv3
  – CPL
thanks

malcolm bain
malcolm.bain@id-lawpartners.com

id law partners
paseo de gracia, 81
08008 – Barcelona
+34 934 671 670