

Computer Software & Copyright Law

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www.asianlaws.org

2. Computer Software & Copyright Law

According to section 2(ffc) of the Copyright Act, a **computer program** is a “set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular results”.

The essential elements of a computer program are:

1. It is a set of instructions expressed in:
 - a. words,
 - b. codes,
 - c. schemes or
 - d. in any other form, including a machine readable medium.
2. capable of causing a computer to:
 - a. perform a particular task or
 - b. achieve a particular results.

Computer **software** is “computer program” within the meaning of the Copyright Act. Computer programs are included in the definition of **literary work** under the Copyright Act.





2.1 Meaning of copyright

[This concept is explained using simple fictional illustrations involving Sanya, who has created easyPDF, a computer program for converting documents into PDF (Portable Document Format)]

According to section 14 of the Copyright Act, "copyright" means the exclusive right to do (or authorize the doing of) any of the following:

1. To **reproduce** a computer programme in any material form including the **storing** of it in any medium by electronic means,

Illustration 1

Sanya has the exclusive right to reproduce the easyPDF program on CD, DVD and other storage media.

Illustration 2

Sanya has the exclusive right to upload the easyPDF program onto her website.

2. To **issue copies** of the computer programme to the public

Illustration 1

Sanya has the exclusive right to provide the easyPDF program along with computer magazines so that the general public can use the software.

Illustration 2

Sanya has the exclusive right to upload the easyPDF program onto her website so that people around the world can download it.

3. To **perform** the computer programme in public, or **communicate** it to the public,

Illustration 1

Sanya has the exclusive right to give a public demonstration of the workings of the easyPDF program.

4. To make any cinematograph **film** or sound **recording** in respect of the computer programme,

Illustration 1

Sanya has the exclusive right to make a promotional film depicting the working of the easyPDF program.

Illustration 2

Sanya has the exclusive right to make a promotional sound recording depicting the working of the easyPDF program.

5. To make any **translation** of the computer programme

Illustration

Currently the easyPDF program has all the menu commands and help files in English. Sanya has the exclusive right to make a version of the easyPDF program that has the menu commands and help files in Hindi.

6. To make any **adaptation** of the work
7. To do, in relation to a translation or an adaptation of the computer programme, any of the acts specified above
8. To sell, give on hire, offer for sale, or offer for hire, any copy of the computer programme.

Illustration 1

Sanya has the exclusive right to offer the easyPDF program for sale.

Illustration 2

Sanya has the exclusive right to act as an Application Service Provider for the easyPDF program e.g. a user will be charged a small fee for every document that he converts to PDF using the easyPDF program.





2.2 First owner of copyright

Section 17 of the Copyright Act is the relevant provision. To understand who the first owner of copyright is, let us take some simple illustrations:

Illustration 1

Sanya, a college student, has created easyPDF, a computer program for converting documents into PDF (Portable Document Format). Sanya will be the first owner of copyright in the easyPDF program.

Illustration 2

Pooja is a computer programmer employed with Noodle Software Ltd. Under her contract of employment with Noodle, the intellectual property in all computer programs created by her vests with Noodle.

During the course of her employment, Pooja creates “Rage of Vampires”, a computer game. The first owner of copyright in “Rage of Vampires” will be Noodle Software Ltd.

Illustration 3

Tanya is a freelance software consultant who advises several software companies. In her free time she creates easyNote, a personal accounting and finance software. Tanya will be the first owner of the copyright in easyNote.

Illustration 4

Sameer is a lawyer who is also proficient in computer programming. He is employed with N&P Law Firm. Under the terms of his employment with N&P Law Firm, the intellectual property of all legal opinions and drafting created by Sameer vests with the law firm.

Considering Sameer’s proficiency in computer programming, his senior at N&P Law Firm requests him to make a “law firm management” software. Sameer creates this software on his holidays. Sameer will be the first owner of the copyright in the law firm management software.

2.3 Term of copyright

According to section 22 of the Copyright Act, copyright subsists in a computer program for 60 years from the beginning of the calendar year next following year in which the author dies.

Illustration 1

Ketaki creates a computer program in 2008. She dies on 12th March, 2010. The copyright in the computer program will subsist for 60 years from 1st January 2011.

Illustration 2

Ketaki and Rajan together create a computer program in 2008. Ketaki dies on 12th March, 2010 while Rajan dies on 13th July, 2014. The copyright in the computer program will subsist till 60 years from 1st January 2015.





2.4 Licences

According to section 30 of the Copyright Act, the following can grant interest in a copyright by way of licences:

- a. the owner of the copyright in any existing work
- b. the prospective owner of the copyright in any future work

The licence must be given in writing and signed by the above or their authorised agents.

Let us consider some illustrations to understand this concept.

Illustration 1

Sanya has created a computer program. She can grant Sameer a licence to sell the program from his website.

Illustration 2

Sanya is working to create a computer program. She is currently testing the “beta” version of the program. She can grant Sameer a licence to sell the final program from his website once it is ready. This licence will take effect only when the final program comes into existence.

Illustration 3

Sanya is working to create a computer program. She is currently testing the “beta” version of the program. She grants Rajan a licence to sell the final program from his website once it is ready.

The final program is ready on 12th March, 2008. But by then Rajan has passed away. In this case Rajan’s legal representatives are entitled to the benefit of the licence.

2.5 Infringement of Copyright

The copyright in a computer program is deemed to be infringed when any person without a license or in contravention of the conditions of a licence:

1. does anything, the exclusive right of which is conferred upon the owner of the copyright by the Copyright Act, or
2. commercially permits any place to be used for the communication of infringing work to the public.

The following are also deemed to be infringement:

1. distributing, selling or hiring out infringing copies,
2. exhibiting infringing copies in public,
3. importing infringing copies into India.

There are several acts that are **not deemed to be infringement** of copyright.

These are explained using the following simple illustrations. In these illustrations, we use the fictional illustration of Sanya who has created the easyPDF software. Sameer has purchased a CD containing the easyPDF software.

Illustration 1

Sameer can make a backup copy of the easyPDF software on another CD so that in case the original CD gets damaged, he can reinstall from the CD ROM.

Illustration 2

The CD purchased by Sameer contains the easyPDF software in a compressed format. Sameer can decompress the software so that it can be installed on his computer.

Illustration 3

The easyPDF software is giving some errors when Sameer installs it on a computer running the proWord software. Sanya is unable to provide any information on why this is happening. Sameer can decompile the easyPDF software to study its code and fix the error.

Illustration 4

Sameer can test the easyPDF software for security vulnerabilities.





Illustration 5

Sameer is using the easyPDF program on his personal laptop. He can also use a copy of the program on his personal desktop computer for non commercial purposes.

Punishment for copyright infringement

Knowingly using the infringing copy of a computer program on a computer is punishable with:

1. imprisonment for a term between **7 days** and **3 years** and
2. fine between **Rs. 1 lakh** and **Rs. 2 lakh**

In case the infringement has not been made for commercial gain, the Court may impose **no imprisonment** and may impose a fine upto **Rs 50,000**.

The offence can be tried by a **magistrate** not below the rank of a Metropolitan Magistrate or a Judicial Magistrate First Class.

In case of offences by companies, persons in charge of the company are also liable unless they prove that the offence was committed:

1. without their **knowledge** or
2. despite their **due diligence** to prevent it.

Microsoft Corporation v Mr. Kiran & Another

C.S. (OS) 111/2003

Microsoft Corporation instituted a suit for permanent injunction restraining the infringement of copyrights etc. against Mr. Kiran.

Mr. Kiran was illegally loading Microsoft software on computers that his company was assembling and selling. The software loaded onto the machine was not accompanied by the original Media i.e.:

1. Compact Discs,
2. Certificate of Authenticity (COA),
3. End User License Agreements (EULAs),
4. User Instruction Manuals,
5. Registration Cards etc

that accompany the plaintiff's genuine software.

Points put forth by Microsoft

1. Microsoft Corporation's computer programs are "works" that were first published in the USA and are also registered in the USA. These programs have been created by Microsoft Corporation's employees for Microsoft.
2. Under the US Copyright Law, US Code Title 17, Section 201(b), the copyright in a work created by an employee belongs to the employer under the "Work made for Hire" doctrine.
3. The computer program, as well as the supplementary User Instructions and Manuals, are "original literary works" as contemplated under Section 2(o) and Section 13(1)(a) of the Copyright Act, 1957. Microsoft Corporation is the owner of the said copyrights.
4. The rights of authors of member countries of the Berne and Universal Copyright Conventions are protected under Indian Copyright law. India and the USA are signatories to both the Universal Copyright Convention as well as the Berne Convention.
5. Microsoft's works are created by authors of member countries and originate from and are first published in the said member countries. These works are, thus, protected in India under Section 40 of the Copyright Act, 1957 read with the International Copyright Order, 1999.
6. Microsoft suffers incalculable damage to its intellectual property rights and business on account of various forms of copyright piracy.





7. A brief description of common methods of copyright infringement employed in relation to computer software is:
 - a. reproducing the software and its packaging so that purchasers are deliberately misled into believing that the product they are buying is genuine software.
 - b. reproducing or "burning" the software onto a blank CD, where no attempt is made to represent that the copy is genuine.
 - c. reproducing a number of the programs on a single CD-ROM, known as a "compilation" CD.
8. Another form of piracy that is assuming great significance in the information age is that of Internet piracy. Internet piracy occurs when software is downloaded from the Internet or distributed via the Internet without the permission of the copyright owner. Common Internet sites used for this infringing activity include online classified advertisements, Auction Houses, newsgroups, personal web sites and Bulletin Board Service (BBS) sites.
9. Mr. Kiran is indulging in the illegal activity of counterfeiting and piracy. Microsoft had earlier called Mr. Kiran for a settlement meeting which he ignored.
10. Microsoft had earlier obtained ex parte ad interim injunction restraining Mr. Kiran from manufacturing, selling, offering for sale, distributing, issuing to public, counterfeit / unlicensed versions of Microsoft software.
11. Microsoft has suffered damages under the following heads:
 - a. **Actual Damages** – Microsoft has suffered a heavy loss of revenue due to the unauthorized loading of pirated versions of the software free of cost, onto the computers of Mr. Kiran's consumers.
 - b. **Damages to Goodwill and Reputation** – The unauthorized loading of Microsoft software from pirated CDs has undermined Microsoft's reputation and goodwill.
 - c. **Exemplary Damages** - Such damages are awarded if there is a flagrant violation by the defendants of the plaintiff's rights, to set a deterrent example for others. Such violation can be inferred from, inter alia, nature of the infringing act, reasonable knowledge of a person skilled in the concerned trade and continuance of violation despite knowledge. Mr. Kiran's act leaves no doubt as to the flagrant violation of Microsoft, the plaintiff's, intellectual property rights.

Findings of the Court

1. The computer industry is a high investment industry not only in terms of money but also in terms of the valuable time, skill and effort which goes into the development of new and advanced computer programs and software, therefore, it becomes imperative that the illegal trade activities of traders like the defendants are restrained and the dangerous growth of the computer software piracy be stemmed. And since Microsoft is the world leader in this field, it tends to be the main target of such counterfeiting and piracy.
2. Various averments made by Microsoft have gone unrebutted as Mr. Kiran has not come forward with any defence.
3. Microsoft has been able to prove that Mr. Kiran has been infringing its copyright, as there is no licence granted by Microsoft to Mr. Kiran for this purpose.
4. Mr. Kiran has willfully, intentionally and flagrantly violated the copyrights and trade mark of Microsoft and has disregarded Microsoft's rights and caused "deliberate and calculated" infringement of copyrights and trademark.
5. Software piracy is a menace and needs to be put down with a heavy hand.

Conclusion

A decree for permanent injunction was passed in favour of Microsoft against Mr. Kiran restraining him from using or otherwise copying, selling, offering for sale, distributing, issuing to the public, counterfeit/unlicensed versions of Microsoft software, in any manner, amounting to infringement of Microsoft's copyrights in the said computer programs and related manuals.

A decree of damages was also passed in favour of Microsoft for Rs. 5 lakh.





3. Software Licenses

Licenses are far more prevalent in the “intangible” world as compared to the “real” world. Suppose you buy a car. Once you pay the price of the car to the dealer, you can do almost anything with the car. You can sell it, rent it, make modifications to it and even destroy it!

The situation is not the same when you “buy” software. In fact you hardly ever “buy” software. You buy a “license” to the software. This license sets the terms and conditions subject to which you can use (and sometimes distribute and modify) the software.

A software license usually consists of

1. **permissions** granted by the creator to the user,
2. **rights** granted by the creator to the user, and
3. **restrictions** placed by the creator,
4. limitations on the creator's **liability**,
5. **warranties** and warranty disclaimers, and
6. **indemnity**,
7. **term** / duration of the license.

Violating the terms of the license infringes the legal rights of the creator of the software and can lead to **legal action**.

When a software is **mass produced** and sold, the license is usually of a “**take-it-or-leave-it**” type. The software vendor does not give the purchaser an opportunity to negotiate the terms of the license. The purchaser can either accept the license in total and purchase it or reject the license and not purchase it. In **customized software** that is usually specially developed for a particular customer, the terms of the license are negotiated between the creator and the user.

Software licenses can be of various types such as:

1. **Time-based licenses** where the license expires after a particular time period (e.g. 1 year). The license has to be renewed after that (usually on payment of additional fees).

Illustration 1

AVG is a popular anti-virus software. Licenses can be purchased for 2 years at a time. During these two years all updates will be available to the user. On expiry of the 2 year period, the license expires and the user must uninstall the software. If the user wants to continue using the software, he must again pay fees and buy a license for a further 2 years.

Illustration 2

Winhex is a popular cyber forensics software. It can be purchased with a 1 year upgrade license. Suppose Sameer purchases this license on 1st January 2008. Till 31st December 2008, he will be eligible to get all upgrades and new versions of Winhex for free. After 1 year this upgrade license will expire. Although Sameer can continue using Winhex, he will not get any further updates for free.

2. **User-based licenses** where the license fee depends upon the number of computers on which the software will be installed (e.g. in case of application software like a word processor). It could also depend upon the number of users who will connect simultaneously to a computer on which the software is installed (e.g. in case of database software or server operating systems)
3. **Feature-based licenses** where the license fee depends upon the features that are required by the user.

Illustration

Winhex is a popular cyber forensics software. Depending on the features that are required, users can purchase the personal license, professional license, specialist license, or forensic license.

Most software licenses also contain clauses relating to disclaimer of warranties, limitation of liability, privacy policy etc. In this book we will focus on software licenses from an intellectual property rights perspective only.





3.1 Freeware Licenses

Freeware is computer software that is:

1. copyrighted
2. available for use free of charge,
3. available for an unlimited time.

Freeware is created and distributed by software developers who want to contribute something to the society but at the same time they want to control the future development of their software. They usually retain their rights over the source code.

Features of a freeware license

A freeware license is basically:

- i. personal,
- ii. non-exclusive,
- iii. non-transferable,
- iv. limited

Many freeware licenses restrict the use of the software for commercial or “non-personal” purposes. The license is non-exclusive as it does not confer any exclusive rights on a particular user. The license is non transferable and does not permit the licensee to transfer any rights to a third person.

The license is limited in the sense that it does not permit any alterations to the software (this is anyway not legally possible without the source code). The license may be further limited in terms of the purposes for which it is permitted. This may be defined by the creator in a positive or negative fashion.

Illustration

Sanya has created easyPDF software and released it with a freeware license. The license states that the software cannot be used for commercial or military purposes. This is a limitation described in a negative fashion as it defines what cannot be done.

Terms of a freeware license usually include:

There are no prescribed standards for freeware licenses and software developers are free to choose and modify licenses as per their needs. This section discusses some of the clauses most commonly found in freeware licenses.

Although most of the clauses would also apply to web based code (such as Active Server Pages etc), this discussion primarily relates to non web-based application or system software.

1. Describing what all is covered by the license

The freeware license usually covers and extends to the “content” of the software which includes all

- a. text,
- b. graphics,
- c. user interfaces,
- d. visual interfaces,
- e. trademarks,
- f. logos, and
- g. computer code

The license covers all aspects of the content including:

- i. design,
- ii. structure,
- iii. selection,
- iv. coordination,
- v. "look and feel"
- vi. arrangement

The freeware license itself is also covered by the license. The user does not have the right to change or modify the license in any way.

The license also extends to

- i. suggestions
- ii. ideas
- iii. enhancements
- iv. requests
- v. feedback
- vi. recommendations
- vii. other information

relating to the software and provided by anyone.

2. Take-it-or-leave-it clause

The freeware license would contain a take-it-or-leave-it clause or statement. The usual wordings are:

*By clicking the "**I accept**" button and/or using the software, you agree to these Terms of Use either for yourself or on behalf of your employer or another entity.*

*If you do not agree with the Terms of Use, you must press the "**I do not accept**" button below and you may not use the software.*

3. Restrictions and Prohibitions

This is one of the most important parts of the licence. It lays down what is restricted and / or prohibited.





In many cases the creators of the software restrict its use for commercial purposes. The most common reason for this restriction is that the author has created two versions of the software –

- a. one for personal use (released as freeware) and
- b. one for commercial use (released commercially)

Commercial users may be given a limited license to test the freeware version for a limited period. After this they may be required to purchase the commercial license for continued usage. This concept is also discussed later under the section on shareware.

The meaning of commercial use can be interpreted differently and must be clarified in the license. Commercial use can mean either of the following:

- i. use by a **commercial organization** such as a company. Under this interpretation, any usage by not-for-profit organizations (like Universities) would be permitted (even if the University was charging a fee for teaching the usage of the software)
- ii. use for **commercial purposes** or endeavors. This would cover any commercial usage irrespective of the status of the user (whether an individual, a University, a company etc)

The license usually prohibits the following acts:

- i. Modification of the software
- ii. Adaptation of the software
- iii. Translation of the software
- iv. Preparing derivative works from the software
- v. Decompiling the software
- vi. Reverse engineering the software,
- vii. Disassembling the software

Prohibitions in case of web based code include:

- i. Copying
- ii. Reproducing
- iii. Republishing
- iv. Uploading
- v. Posting
- vi. Public display
- vii. Encoding
- viii. Translating
- ix. Distributing
- x. Linking
- xi. Mirroring
- xii. Framing

4. Intellectual Property Ownership

The license must specify that the term "Intellectual Property Rights" covers all proprietary rights including but not restricted to rights existing globally under:

- i. copyright law
- ii. patent law
- iii. trade secret law
- iv. trademark law
- v. unfair competition law

5. Trademarks

This clause lists the various trademarks owned by the software creator. In many countries the graphics, logos, designs, page headers, button icons, scripts and service names are also registered as trademarks, or trade dress.

This clause prohibits the unauthorized use of these trademarks and / or trade dress as part of domain names or in connection with any product or service.

6. Jurisdiction

This clause specifies the city / country whose courts have exclusive jurisdiction over disputes involving the license.





3.2 Windows License

Considering the huge number of users worldwide who use the Microsoft Windows operating system, the Windows End-User License Agreement ("EULA") is discussed here.

This section discusses some of the terms of the EULA for **Microsoft Windows XP Professional Edition**. It may be noted that the EULA for most Microsoft products is similar.

1. Basic information

The End-User License Agreement ("EULA") is a legal agreement between Microsoft Corporation and the end user. It extends to the Microsoft software accompanying the EULA as well as associated media, printed materials, "online" or electronic documentation, and Internet-based services (collectively known as "Software").

A user is bound by the terms of the EULA by installing, copying or otherwise using the Software. If a user does not agree to be bound by the EULA, he must not install copy or use the software.

The EULA applies to updates, supplements, add-on components, product support services, or Internet-based services components, of the Software obtained from Microsoft after the date of obtaining the initial copy of the Software.

To use Software identified as an upgrade, the user must first be licensed for the software identified by Microsoft as eligible for the upgrade. After upgrading, the user may no longer use the software that formed the basis for the upgrade eligibility.

2. Grant of licence

Rights granted by the EULA are:

1. Installation and use

The user can install, use, access, display and run one copy of the Software on a single computer, such as a workstation, terminal or other device ("Workstation Computer"). The Software cannot be used by more than two (2) processors at any one time on any single Workstation Computer.

2. Mandatory Activation

The license rights granted under this EULA are limited to the first thirty (30) days after first installation of the Software unless the user activates the licensed copy through the Internet or telephone. Reactivation is needed if the computer hardware is altered.

3. Device Connections

The EULA permits a maximum of 10 computers or other electronic devices (each a "Device") to connect to the Workstation Computer to utilize one or more of the following services of the Software: File Services, Print Services, Internet Information Services, Internet Connection Sharing and telephony services.

4. Remote Desktop / Remote Assistance / NetMeeting

Remote Desktop access requires a separate Software license. As an exception, the single primary user of the Workstation Computer may access a Workstation Computer Session from any Device without acquiring an additional Software license for that Device.

5. Storage / Network Use

The EULA permits storage or installation of a copy of the Software on a storage device, such as a network server, used only to install or run the Software on other Workstation Computers over an internal network. An additional license is required for each separate Workstation Computer on or from which the Software is installed, used, accessed, displayed or run. A license for the Software may not be shared or used concurrently on different Workstation Computers.

3. Reservations of rights and ownership

Microsoft reserves all rights not expressly granted in the EULA. The EULA stresses that the Software is protected by copyright and other intellectual property laws and treaties and that Microsoft or its suppliers own the title, copyright, and other intellectual property rights in the Software. The EULA also expressly states that **the Software is licensed, not sold.**

4. Reverse Engineering

The EULA prohibits reverse engineering, decompilation and disassembly of the software unless such activities are permitted by the law.

Exception

Section 52(ab) of the Copyright Act permits this for specific purposes.

5. Rental / Commercial hosting

The EULA prohibits renting, leasing, lending or providing commercial hosting services with the Software.





6. End user proof of license

A genuine Microsoft "Proof of License" label with a genuine copy of the software identifies a licensed copy of the Software. To be valid, the label must appear on Microsoft software packaging. If the label is received separately, it is invalid. The packaging should be kept as it has the label on it to prove that the user is licensed to use the Software.

7. Software Transfer

The Software can be transferred to a different Workstation Computer. After the transfer, the Software must be completely removed from the former Workstation Computer.

The initial user of the Software may make a one-time permanent transfer of this EULA and Software to another end user, provided the initial user retains no copies of the Software.

This transfer must include the Software and the Proof of License label. The transfer may not be an indirect transfer, such as a consignment. Prior to the transfer, the end user receiving the Software must agree to all the EULA terms.

8. Termination

Microsoft can terminate the EULA if the user fails to comply with the terms and conditions of the EULA. In such event, the user must destroy all copies of the Software and all of its component parts.

9. Applicable Law

If the Software has been acquired in USA, the EULA is governed by the laws of the State of Washington.

If the Software has been acquired in Canada, the EULA is governed by the laws of the Province of Ontario, Canada.

If the Software has been acquired in the European Union, Iceland, Norway, or Switzerland, then local law applies.

If the Software has been acquired in any other country, then local law may apply.

3.3 Open Source Licenses

The Open Source Initiative (OSI) is a California (USA) based not for profit organization that spearheads the open source movement around the world.

To qualify as “open source”, a particular software must comply with several conditions. In order to understand these conditions, let us take a fictional illustration. Sanya has developed easyPDF - a software for converting documents into PDF (portable document format). Sanya wants to release easyPDF as open source software. easyPDF must comply with the following conditions:

1. Free Redistribution

The easyPDF license **cannot restrict** anyone from **selling** or **giving away** the easyPDF software as a component of an aggregate software distribution.

Illustration 1

Sameer advises small companies on using technology to streamline their business processes. He also sells software (including easyPDF) to such companies. Sanya cannot stop Sameer from selling easyPDF.

Illustration 2

Siddharth uses easyPDF along with some code developed by him to create easyWord, a word processing software. Sanya cannot stop Sameer from using the easyPDF software as part of easyWord.

The easyPDF license **cannot provide for royalty** or other fee for such sale or distribution.

Illustration

In the previous illustrations, Sanya cannot charge Sameer or Siddharth any royalty or fee for selling or using easyPDF.

2. Source Code

The easyPDF software program must

1. include source code, and
2. allow distribution in source code as well as compiled form.

Illustration 1

easyPDF is not distributed with the source code. However, when easyPDF is started





up by a user, a message is flashed on the user's screen. This message contains details of the website from where the easyPDF source code can be downloaded for free. This is acceptable.

Illustration 2

easyPDF is not distributed with the source code. However, a CD containing the easyPDF source code can be obtained by sending the cost of postage and the cost of a blank CD to Sanya. This is acceptable.

The easyPDF source code must not be deliberately obfuscated. Obfuscated code (also called shrouded code) is source code that is very difficult to read and understand. Programs known as obfuscators can make source code very difficult to read and understand.

Let us take a **simple illustration of obfuscated code**. The following basic code can be put in a webpage:

```
<a href="http://www.sanyanagpal.com">Click here to visit Sanya Nagpal's website</a>
```

The webpage will display a link to sanyanagpal.com and will look something like this:

[Click here to visit Sanya Nagpal's website](http://www.sanyanagpal.com)

The obfuscated code will look like the illustration below:

```
<script
language=JavaScript>m='%3Ca%20href%3D%22http%3A//www.sanyanagpal.com%22%3EClick%20here%20to%20visit%20Sanya%20Nagpal%27s%20website%3C/a%3E';d=unescape(m);document.write(d);</script>
```

3. Derived works

The easyPDF license must allow modifications and derived works. The license must also allow the modified or derived works to be distributed under the same terms as the easyPDF license.

4. Integrity of the author's source code

The easyPDF license can restrict the source-code from being distributed in modified form under some conditions that are illustrated below.

Illustration 1

The easyPDF license allows others to include “patch files” along with the original easyPDF source code. The “patch files” can modify the easyPDF program at the time when it is compiled.

Illustration 2

The easyPDF license can state that the derived works must have a different name.

Illustration 3

Sanya has release easyPDF version 1. The license can state that the derived software must have a different version number.



5. No Discrimination against Persons or Groups

The license must not discriminate against any person or group of persons.

Illustration

The easyPDF license cannot state that Pakistani citizens cannot use the program.

6. No Discrimination against Fields of Endeavor

The license must not restrict anyone from making use of the program in a specific field of endeavor. For example, it may not restrict the program from being used in a business, or from being used for genetic research.

Illustration

The easyPDF license cannot state that it cannot be used in commercial organisations or banks etc.

7. Distribution of License

The rights attached to the program must apply to all to whom the program is redistributed without the need for execution of an additional license by those parties.

Illustration

Sanya is distributing the easyPDF software from her website. Sameer copies the easyPDF source code and program and distributes it from his website. Pooja downloads easyPDF from Sameer's website. The rights attached to easyPDF now automatically lie with Pooja also.



8. License Must Not Be Specific to a Product

The rights attached to the program must not depend on the program being part of a particular software distribution.

Illustration

Sanya is distributing the easyPDF software along with a group of other software that she has developed. Collectively this group is called the easySuite and distributed by Sanya as open source.

Sameer extracts the easyPDF program from easySuite. He then distributes easyPDF to Pooja.

Pooja will have the same rights as those granted by easySuite.

9. License Must Not Restrict Other Software

The easyPDF license must not place restrictions on other software that are distributed along with it.

Illustration

The easyPDF license cannot state that all programs distributed on the same CD must be open source software.

10. License Must Be Technology-Neutral

No provision of the license may be predicated on any individual technology or style of interface.

Illustration:

The easyPDF license cannot be a click-wrap licence i.e. it cannot ask users to click on an "I Accept" button.

This is because "click-wrap" agreements are not possible in many cases such as FTP download or where the source code is run in a command line / non-GUI (Graphical User Interface) based environment.

3.4 GNU General Public License

Many popular software programs come with a licence similar to the one illustrated below:

This file is part of the easyPDF Software Suite.

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You should have received a copy of the GNU General Public License along with easyPDF Software Suite.

If not, see <<http://www.gnu.org/licenses/>>.

GNU General Public License (GNU GPL) is one of the most popular licenses in contemporary software.

Essential features of GNU GPL version 3 are:

1. It is a **copyleft** license for software and other kinds of works.

Copyleft is a general method for making a program or other work free, and requiring all modified and extended versions of the program to be free as well.

Copyleft mandates that anyone who redistributes the software, with or without changes, must pass along the freedom to further copy and change it.

Usually, to copyleft a program, the programmer first states that the software is copyrighted. Then he adds distribution terms and conditions which are a legal instrument. These terms give everyone the rights to use, modify, and redistribute the program's code or derivatives only if the distribution terms are unchanged.





Copyleft is thus the opposite of copyright. Copyright takes away a users freedom while copyleft guarantees the freedom.

2. GNU GPL guarantees the **freedom to share and change** all versions of a program. This ensures that the software remains free software for all its users.

GNU GPL covers **free software**. This does not imply that there can be no money charged for the software. It refers to **freedom to do the following:**

- a. to distribute copies of the software
- b. to run the software for any purpose
- c. to sell copies of the software
- d. to access the source code
- e. to modify the source code
- f. to study how the software runs
- g. to change and adapt the software
- h. to use parts of the software for new free programs

3. The GNU GPL prohibits the registration of **patents** that can make the software “non-free”.

The following illustrations will clarify some of the conditions of the GNU GPL. The illustrations are based on a fictional situation where Sanya has developed easyPDF - a software for converting documents into PDF (portable document format). The easyPDF software and its source code have been released under GNU GPL. Sanya holds the copyright over the source code as well as the software.

Illustration 1

Sanya can **sell** the easyPDF software and / or source code for any price that she deems suitable.

Illustration 2

Sanya can charge a **fee for downloading** the easyPDF software and / or source code from her website.

Illustration 3

Sameer pays a fee and downloads the easyPDF software from Sanya’s website. Sameer can now distribute the software for free from his website, on CDs etc.

Pooja gets the software free from Sameer’s website. Pooja is not required to inform Sanya about receiving the software. She is also not required to pay Sanya any fees.

Illustration 4

Sanya cannot ask Sameer to enter into a non-disclosure agreement in respect of the easyPDF software / source code.

Illustration 5

Sameer modifies the easyPDF source code. Sameer cannot ask Pooja to enter into a non-disclosure agreement in respect of the modified easyPDF software / source code.

Illustration 6

Noodle Ltd has requested Sanya to make some modifications to the easyPDF source code. Noodle Ltd and Sanya can enter into a non-disclosure agreement whereby Sanya cannot disclose these modifications till Noodle approves them.

Noodle can insist that Sanya cannot release the modified software / source code to anyone else without their permission.

Noodle has the right to distribute the software / source code to others without Sanya's permission.

Illustration 7

Sanya can write a copyright notice in her own name in the license. E.g. the easyPDF source code files can have the following notice: *Copyright © 2008 Sanya Nagpal.*

Illustration 8

Sanya can simultaneously release the easyPDF source code / software under the GNU GPL as well as under a commercial licence.

Illustration 9

Sameer wants to use the easyPDF source code along with the easyBook source code (created by Pooja) and combine them to create a new software program.

If the licences of easyPDF and easyBook allow the source codes to be combined then the two licences are said to be **compatible**. If not, the licences are **incompatible**.





Some licences may allow linking of the codes but not merging their code into one module.

The licences of two programs need not be compatible in case the programs are simply required to be installed in the same computer.

Illustration 10

Sanya cannot licence the easyPDF software / source code to Sameer for exclusive use. The GNU GPL license cannot be revoked.

Illustration 11

Sanya cannot force users of easyPDF software / source code to make their PDF documents open source. She has no rights over the documents created by others using easyPDF.

However, if the easyPDF program copies part of itself onto the output, then the output would also come under GNU GPL.



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