Internet Week 2002
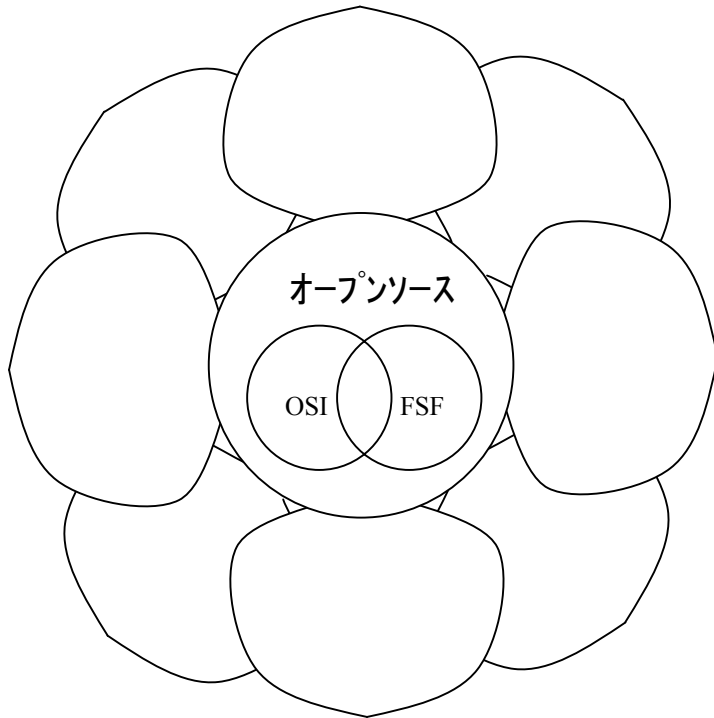
オープンソース・ライセンスの実務
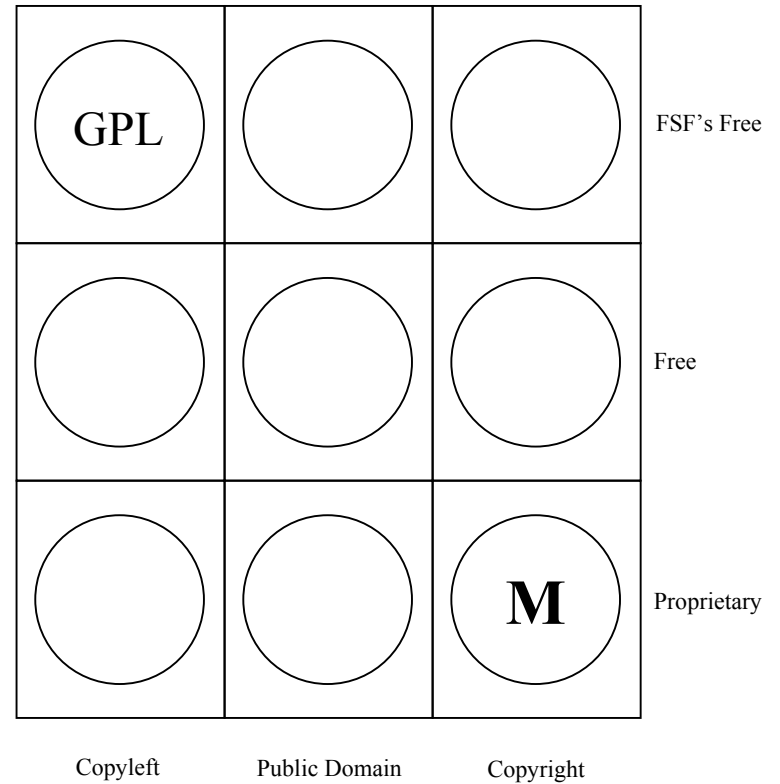
弁護士 小松 弘

オープンソース両界曼荼羅

胎蔵界

金剛界

オープンソース

OSI   FSF

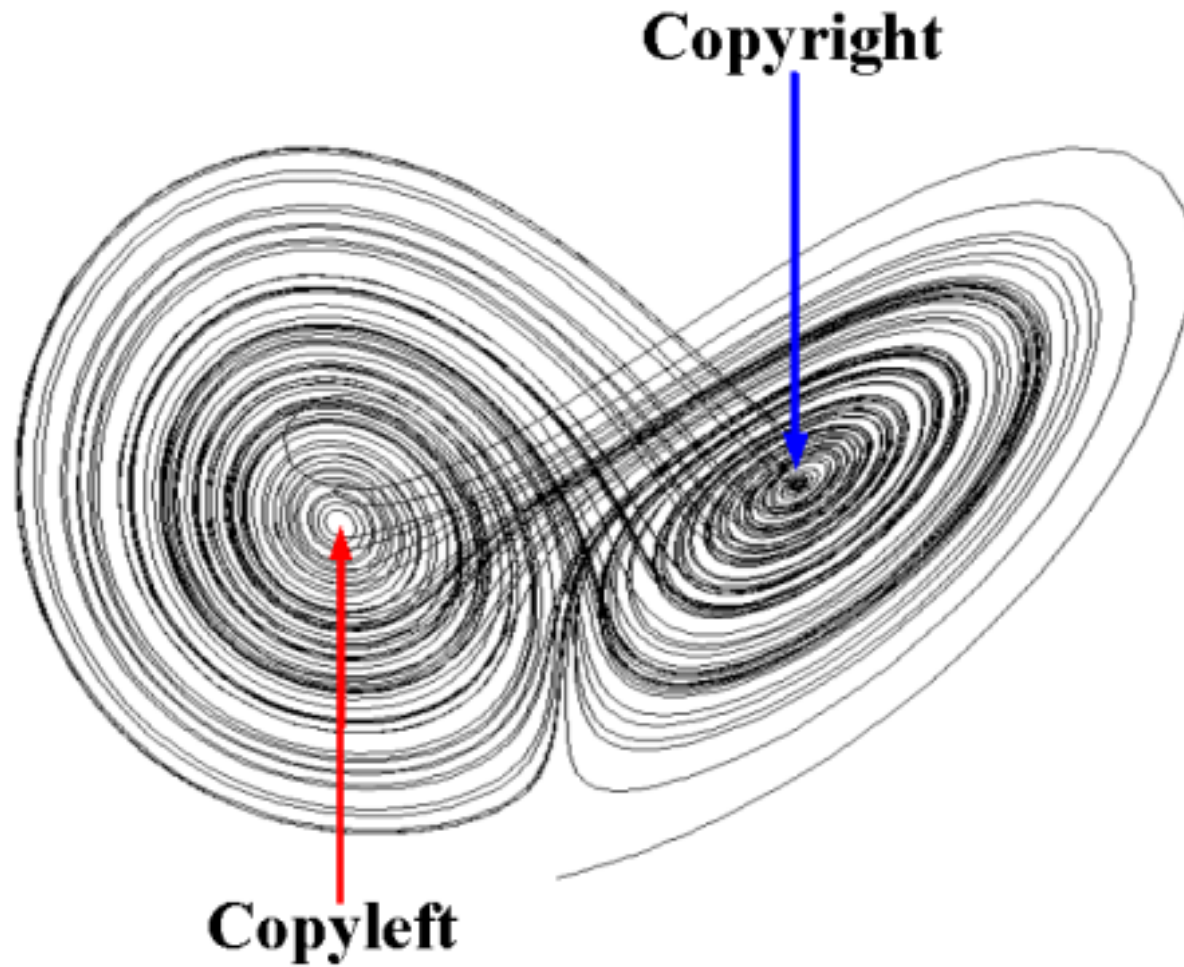|		
GPL			FSF's Free
			Free
		M	Proprietary

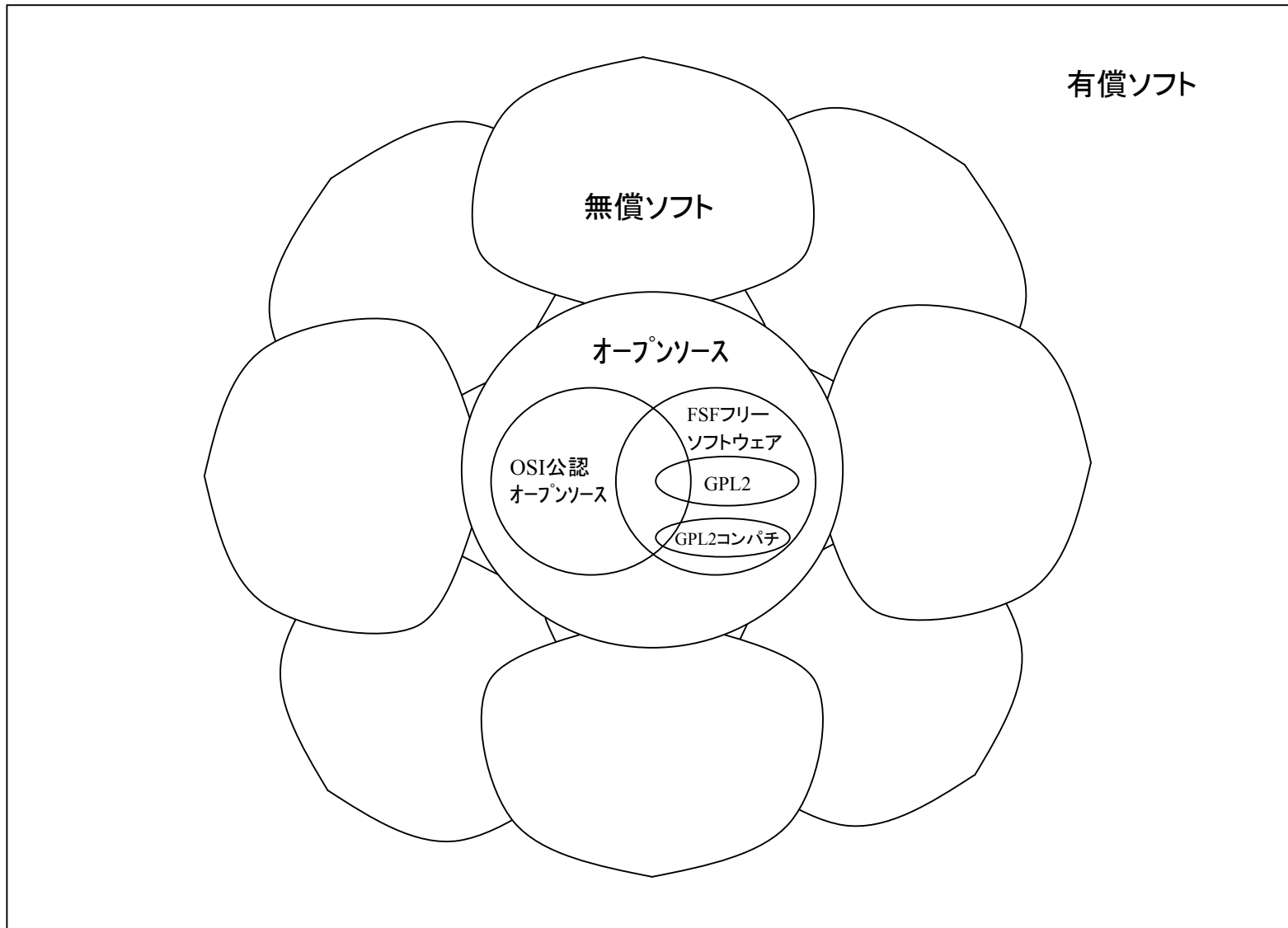Copyleft   Public Domain   Copyright

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- 「ソフトウェアを再配布するには，再配布を受けた者にも，複製と変更の自由を与えなければならない」
- 本来は独占的権利であった著作権を，複製・変更・再配布の自由を拡散するために利用
- "right" を逆手にとったという意味で "left"

ローレンツ・アトラクターによるCopyleftのイメージ

Copyright

Copyleft

OSI vs FSF

有償ソフト

無償ソフト

オープンソース

FSFフリー
ソフトウェア

OSI公認
オープンソース

GPL2

GPL2コンパチ

5

フリーソフトウェアの定義 (FSF)

0. 目的のいかんを問わず，プログラムを実行する自由
1. プログラムの動作を研究し，必要に応じてプログラムを改変する自由
2. 再配布の自由
3. プログラムを改良し，改良部分を公表する自由
● ソースコードへのアクセスは第2・第4の自由の前提となる。
● 無料であっても，フリーソフトウェアとは限らない。

Open Source Initiative (OSI)

22 Jan 1998: ネットスケープ, コード公開を発表

3 Feb 1998: パロ・アルトでのブレイン・ストーミングで "open source" の用語が固まる

Early February: "open source" 対 "free software" の議論が盛り上がる

opensource.org のサイト立ち上げ

23 Feb 1998: ネットスケープ, オライリーが"open source"に言及

31 Mar 1998: Navigator ソースコードのリリース

7 Apr 1998: "Freeware Summit Conference" で "open source" の用語と営利目的を採択

April 1998: "open source"の用語が業界報道に浸透

22 November 1998: OSI をカリフォルニア州公益法人とすることを発表

→ Apache/Linux プロジェクトの成功と某M社への脅威(H文書)

OSI によるオープンソースの定義

1. 再頒布の自由
2. ソースコード
3. 派生ソフトウェアの作成・頒布
4. 原作者のソースコードの完全性
5. 個人または集団の差別禁止
6. 利用分野の差別禁止
7. 原ライセンスの汎布
8. 特定製品でのみ有効なライセンス禁止
9. 他のソフトウェアの同梱制限ライセンス禁止

Mozilla vs GPL

- ●Mozilla はオープンソースのフリーソフトウェアであるが, GPL と両立しない。
- ●複雑な制約条件
- ●特許に関する条項
- ●複数ライセンス可能(GPL とのデュアル・ライセンスは可能）

OSI vs FSW

●OSI公認オープンソースであるがFSF公認フリーソフトでないもの。

- Artistic

- Apple Public Source License

  APSL 1.2: 組織内で配布された改変は公表しなくてはならない。

Artisticのどこが気に入らなかったのか？

Original	Clarified
The "Artistic License"	The Clarified Artistic License
"Reasonable copying fee" is whatever you can justify on the basis of media cost, duplication charges, time of people involved, and so on. (You will not be required to justify it to the Copyright Holder, but only to the computing community at large as a market that must bear the fee.)	"Distribution fee" is a fee you charge for providing a copy of this Package to another party.
"Freely Available" means that no fee is charged for the item itself, though there may be fees involved in handling the item. It also means that recipients of the item may redistribute it under the same conditions they received it.	"Freely Available" means that no fee is charged for the right to use the item, though there may be fees involved in handling the item. It also means that recipients of the item may redistribute it under the same conditions they received it.
2. You may apply bug fixes, portability fixes and other modifications derived from the Public Domain or from the Copyright Holder. A Package modified in such a way shall still be considered the Standard Version.	2. You may apply bug fixes, portability fixes and other modifications derived from the Public Domain, or those made Freely Available, or from the Copyright Holder. A Package modified in such a way shall still be considered the Standard Version.
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	3.
	e) permit and encourge anyone who receives a copy of the modified Package permission to make your modifications Freely Available in some specific way.
	4.
	e) offer the machine-readable source of the Package, with your modifications, by mail order.
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GPL両立性の阻害要件①

- ライセンサーによる一方的ライセンス終了条項
  （⇒　消費者契約法）
- 改変部分の公表·グラントバック強制
  （⇒　独禁法）
- 変更されたバージョンの配布制限
- ライセンス·フィーの徴収

⇒　FSF nonfree　⇒　GPLと矛盾

GPL両立性の阻害要件②

- ユーザーの自由を不当に制約する条項
- ユーザーにGPLにはない要求を課する条項
- BSD宣伝条項【BSD, Apache, Zope】
- 配布の概念を不当に広げる条項【LaTeX】
- 変更したソースをパッチでしか配布できないとする条項【Qt】（⇔　OSD）

GPL Compatibilityの効果

GPL 不倶戴天	GPL	LGPL	GNUGuile
媒体上に同梱	○	○	○
Kernel Module	×(?)	―	―
Subclass	×	○	○
Link/RPC	×	○	○
Embed (header ファイル使用)	×	×	○
Merge	×	×	×

GPLの加法規則

- $\alpha + \beta\ =\ \gamma$

- $\alpha = \mathrm{GPL}$、$\beta = \mathrm{GPL}$両立のとき $\gamma = \mathrm{GPL}$

- $\alpha \fallingdotseq 0$のときは？

- $\alpha << \beta$ のときは？

- "Merge"の著作権法上の効果

GPLの減法規則もしくは魔女算術

- $\gamma\ =\ \mathrm{GPL}$のとき（ $\gamma\ -\ \alpha$ ）$=\ \mathrm{GPL}$

- $\alpha\ +\ \beta\ =\ \gamma$

$\mathrm{GPL}(\alpha)+\mathrm{BSD}(\beta)=\mathrm{GPL}(\gamma)$

$\mathrm{BSD}(\beta)=\mathrm{GPL}(\gamma)-\mathrm{GPL}(\alpha)\ =\mathrm{GPL}(\ \gamma\ -\ \alpha\ )$

$\therefore\ \mathrm{BSD}\ (\beta)=\mathrm{GPL}(\beta)$ □

GPLは裸の王様！？

- ASP問題　＝　GPLの自己矛盾
- シュリンク・ラップ
- 法令
- "Proprietary"概念の破綻
- ハードウェアのソフト化とレギュレーション

GPL ver.3はGPL ver.2と両立しない

- AGPL

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.. .. (omitted) .. ..

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GPLのお作法

- 英文COPYINGファイルの同梱
- Legendの表示

- 草の根プロジェクトでは比較的よく守られている

- プレスティージャスなインスティテュートは不作法なケースが多い

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Version 2, June 1991

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GPL Legend

<one line to give the program's name and a brief idea of what it does.>

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