

A Comparison of the GPL and the Microsoft EULA

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Introduction

This document has been written in an attempt to review and contrast the samples of licenses made available by Microsoft and the Free/Open Source Software (FOSS) community. As these two have now become the most prominent purveyors of platforms and software application technology in the computer industry worldwide, we feel it would be instructive for business and organisational users to have a plain-language analysis of these key components of the software they use. We will also attempt a very simple quantitative analysis of what portions of both licenses devote to giving users rights, taking away user rights, and limiting the extent to which users can make legal claims or sue the purveyors of the software from both camps.

The Microsoft Windows XP Professional End User License Agreement (the EULA hereafter) was selected as representative of the current-generation license provided by Microsoft for business-grade systems. The GNU General Public License (the GPL hereafter) has been selected as the most commonly-used Free/Open Source Software (FOSS) license. The GPL is used by well-known platforms and software technology such as Linux, GNOME, KDE, OpenOffice.org and MySQL.

While much of what we will cover may be known to some readers, we believe that there is widespread ignorance of both the EULA and the GPL. We will thus make every effort to provide a clear, simplified analysis of both, to assist in the better understanding of these licenses which are very important to all users of computers.

Document Format in PDF

This document is made available in PDF format, to allow for widespread viewability on most computer platforms, and for high-quality printed output. It may also be made available in HTML format.

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http://www.cybersource.com.au/cyber/about/comparing_the_gpl_to_eula.pdf

Methodology

The authors will take the approach of including segments of each of the two licenses we are comparing, interspersed with our own comments to highlight the issues we will be discussing.

We will determine what rights are allocated to the users of both EULA and GPL software, as well as what restrictions are placed on the rights of the users. We will create a table outlining the attributes of both licenses, along with our analysis of whether these attributes are a positive or negative from the perspective of prospective users of both types software.

Finally, we will make available a detailed executive summary of the core similarities and differences between the licenses, to give busy readers a rapid, one page overview.

Key

The license portions we include here are for the purposes of exposition and commentary. All license portions are shown with a blue-gray background.

We make every effort to concentrate on just those areas of both licenses which have specific, pertinent content to convey to our readers. We will explicitly state, throughout the document, where we have extirpated segments of otherwise un-interesting license text, by using an *ellipsis* [...].

We will also highlight, using yellow background, any particularly interesting elements or phrases.

Responses to the Analysis

We welcome your input on any topic which we touch upon within this document.

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Executive Summary

In this analysis, we review both the Microsoft EULA and the GPL used for most Free/Open Source Software. We particularly look at what the similarities and differences are between these two licenses. We will also try and provide a quantitative determination of what positives both licenses carry for you, the user, along what the negatives are.

In general, a large part of the Microsoft EULA concerns itself with limiting your use of the software, and with absolving Microsoft from any responsibilities it may have with respect to the warranty. In contrast, the GPL spends most of its time specifying the rights allocated users, and to responsibilities for the use of the software from the perspective of software distributors or programmers who incorporate GPL code. Few user-level restrictions are evident.

It is one of the more generally repeated presumptions of users who select to purchase and operate Microsoft's applications released under the EULA (over corresponding Open Source applications released under the GPL,) that they do so because they have someone to hold legally responsible in case of application software failure or catastrophic error. A close reading of the EULA reveals that the licence explicitly *removes all avenues and all recourse* that a user of Microsoft's software has for *legal relief of any sort*. At best, you may recover the cost of the software product, or US\$5.

Further, to the best of the authors' knowledge, no single person or organisation which is a user of Microsoft's software has ever successfully litigated against Microsoft with respect to application software failure or catastrophic error, in the 27 years of their operation. If you are aware of any such instance, we would welcome full details.

What follows is not legal advice but the opinion of the author as to the practical management interpretations and a *very* brief overview of both licenses, highlighting what proportion (simply enumerated by highlighted paragraph section line-count) of each license allocates rights to you, takes rights from you, or limits your rights to legal relief (i.e, suing the purveyor of the software.) This is not intended as anything more than a cursory and simple quantitative analysis of each license, to give an indication of the core areas of focus and overall flavour.

Quantitative Analysis

	<i>EULA</i>	<i>GPL</i>
The percentage of the licence which limits your rights	45%	27%
The percentage of the licence which extends your rights	15%	51%
The percentage of the licence which limits your remedies	40%	22%

The conclusion we reach is that the majority of the Microsoft EULA appears to protect Microsoft and limit the choices, options and actions taken by the users of the software covered by that license. In contrast, the majority of the GPL is designed to apportion rights to the users of the software covered by that license, with a secondary emphasis on protecting the originating developers of that software, in respect to the continuation of the availability of the software source-codes (under the GPL) in perpetuity. In all, a marked contrast to the EULA.

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Windows XP End User License Agreement

Microsoft Windows XP Professional END-USER LICENSE AGREEMENT

IMPORTANT-READ CAREFULLY: This End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and Microsoft Corporation for the Microsoft software product identified above, which includes computer software and may include associated media, printed materials, "online" or electronic documentation, and Internet-based services ("Product"). An amendment or addendum to this EULA may accompany the Product. YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA BY INSTALLING, COPYING, OR OTHERWISE USING THE PRODUCT. IF YOU DO NOT AGREE, DO NOT INSTALL OR USE THE PRODUCT; **YOU MAY RETURN IT TO YOUR PLACE OF PURCHASE FOR A FULL REFUND.**

Analysis

Microsoft here claims that it allows users to return this product for a full refund, if they are not happy to agree with the terms of the license agreement. There have been numerous accounts of many users failing to retrieve their outlay on Microsoft products, even though they comply with this prescription. For instance, it appears to be almost impossible to return an unused Windows XP product one has purchased with hardware, and receive a refund, as many users of alternative operating systems (Linux, FreeBSD etc.) have found.

1. GRANT OF LICENSE. Microsoft grants you the following rights provided that you comply with all terms and conditions of this EULA:

* Installation and use.

You may **install, use, access, display and run one copy of the Product on a single computer**, such as a workstation, terminal or other device ("Workstation Computer").

Analysis

Microsoft explicitly states that you can only install and use this software on one, and only one computer. This does not allow you to install on two computers, and only use one at a time. Therefore, if you had one desktop and one laptop PC, you will only be able to install this software on one of them.

The **Product may not be used by more than two (2) processors at any one time on any single Workstation Computer.**

Analysis

Microsoft explicitly disallows you from using this software on a computer system which has more than 2 CPUs. Thus, if you have a computer with 4 CPUs, you will not be allowed to install this software.

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You may permit a maximum of ten (10) computers or other electronic devices (each a "Device") to connect to the Workstation Computer to utilize the services of the Product solely for File and Print services, Internet Information Services, and remote access (including connection sharing and telephony services). The ten connection maximum includes any indirect connections made through "multiplexing" or other software or hardware which pools or aggregates connections.

Analysis

Under this licence, Microsoft does not allow you to connect more than 10 computers to your computer. You cannot bypass this by having another device which aggregates computer connections to your computer. Presumably, Microsoft allows more connections to computers running differently-licensed software, but then sells that software at much higher prices.

You cannot really use any computer running this license's software to generally function as a web-server or a file-server.

Except as otherwise permitted by the NetMeeting, Remote Assistance, and Remote Desktop features described below, you may not use the Product to permit any Device to use, access, display or run other executable software residing on the Workstation Computer, nor may you permit any Device to use, access, display, or run the Product or Product's user interface, unless the Device has a separate license for the Product.

Analysis

When accessing your Windows XP system desktop from a remote computer, and you decide not to use one of the enumerated Microsoft technologies, but use general-purpose remote-control software alternatives, such as VNC or PCAnywhere, you are required to purchase additional Windows XP licences for each device that can access your Windows XP system.

* Mandatory Activation.

The license rights granted under this EULA are limited to the first thirty (30) days after you first install the Product unless you supply information required to activate your licensed copy in the manner described during the setup sequence of the Product. You can activate the Product through the use of the Internet or telephone; toll charges may apply.

Analysis

Microsoft states that you can only run this software that you have purchased, for 30 days. After this 30 day period, you will be asked to *supply any information they ask for*, in order to continue using this software. Some charges for communications with Microsoft to activate your software may arise.

There are potential privacy issues with respect to this requirement. We understand that there are many users who are rankled at having to authenticate themselves over and over in order to use software they have legitimately acquired.

You may also need to reactivate the Product if you modify your computer hardware or alter the Product. There are technological measures in this Product that are designed to prevent unlicensed or illegal use of the Product. You agree that we may use those measures.

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Analysis

If you make some (unspecified) hardware alterations on your computer, the software may stop working. This may mean that when you next replace a number of hardware items on your computer (a hard disk and video card, or LAN card and sound card,) your computer may cease to function normally.

In practice, this may mean that if your computer stops working during a time when you cannot access Microsoft to retrieve a new activation key, you will not be able to carry on with your work or other workstation activities. There has been at least one very famous case where an IT journalist was unable to continue using his laptop when he extricated a PCMCIA/PC-Card adapter, causing him great problems in writing up his articles regarding an IT trade show he was flying to. Further, you allocate rights to Microsoft in agreeing to the installation of '*technical measures*' which are neither defined nor elucidated.

You also ascribe to Microsoft any rights you have with respect to raising complaints about this, or for any redress. In short, if this problem arises, and no matter what inconvenience it may cause, you can do nothing about it.

* Storage/Network Use. You may also store or install a copy of the Product on a storage device, such as a network server, used only to install or run the Product on your other Workstation Computers over an internal network; however, you must acquire and dedicate an additional license for each separate Workstation Computer on or from which the Product is installed, used, accessed, displayed or run. A license for the Product may not be shared or used concurrently on different Workstation Computers.

Analysis

Microsoft gives you the right to store the installation media contents on a central point (a server) for later installation on multiple computers. You need to acquire a separate license for each of these computers.

* Reservation of Rights. Microsoft reserves all rights not expressly granted to you in this EULA.

Analysis

If you have not been allocated any rights explicitly by this license, then these rights belong to Microsoft, not you.

2. UPGRADES. To use a Product identified as an upgrade, you must first be licensed for the product identified by Microsoft as eligible for the upgrade. After upgrading, you may no longer use the product that formed the basis for your upgrade eligibility.

Analysis

When you buy an upgrade to this software, and install it, you are no longer permitted to install or use this version of the software.

In practice, this may be an issue if you encounter legacy software that you cannot get to run properly on the new version of the platform software, as you are specifically not allowed to use the old

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(working) version once you have installed an upgrade. This seems to be irrespective of the fact that both operating systems may be installed on a single computer (i.e dual-boot.) and therefore not violating the 'do not install on multiple computers' clause found elsewhere in the EULA.

3. ADDITIONAL SOFTWARE/SERVICES. This EULA applies to updates, supplements, add-on components, or Internet-based services components, of the Product that Microsoft may provide to you or make available to you after the date you obtain your initial copy of the Product, unless we provide other terms along with the update, supplement, add-on component, or Internet-based services component. Microsoft reserves the right to discontinue any Internet-based services provided to you or made available to you through the use of the Product. [...]

Analysis

All subsequent updates and fixes to the software covered by this license, are also covered by this license, unless Microsoft changes the license.

Microsoft makes no claims that its updated licenses will retain the spirit of this license. Therefore, they may produce licenses (perhaps for critical software flaws) which you may find problematic or exceedingly onerous. However, you will not be able to do anything about these issues, as you may be in a position where you *must* install these critical software updates.

4. TRANSFER-Internal. You may move the Product to a different Workstation Computer. After the transfer, you must completely remove the Product from the former Workstation Computer.

Analysis

If you install the software covered by this license on another computer, you must delete it from the first computer.

Transfer to Third Party. The initial user of the Product may make a one-time transfer of the Product to another end user. The transfer has to include all component parts, media, printed materials, this EULA, and if applicable, the Certificate of Authenticity.

Analysis

You are able to sell or give the software away to one other user (if you are the software's first licensee.) This can happen *only once*. This means, that if you buy this software from the user who purchased the software from Microsoft or a nominated reseller, then *you* are not able to sell or give the software away to yet another user.

If you give your copy of the software to another user, then you must remove the software from your computer completely.

The transfer may not be an indirect transfer, such as a consignment. Prior to the transfer, the end user receiving the transferred Product must agree to all the EULA terms.

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Analysis

You must get the user you are selling/giving this software to, to agree to these licence terms. How this is to be done, this license doesn't specify.

No Rental. You may not rent, lease, lend or provide commercial hosting services to third parties with the Product.

Analysis

You cannot lend or rent this software to others. You cannot make this software available to others via some form of remote access in a web-hosted version. This presumably means that the only way to give your copy of the software to someone else, is to 'sell' it to them, or give it to them, and completely remove your copy. Now, if we follow Microsoft's dictum from above, this would mean that this user can then *not* give you the software back, as it would imply breaking your license agreement due to that user not being the software's *initial* user.

Further, it might be construed that using any product released under this licence in a *cyber-cafe* may constitute *rental* of this product to third parties, and would thus contravene this licence. This isn't clear from the wording.

5. LIMITATION ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY. You may not reverse engineer, decompile, or disassemble the Product, except and only to the extent that it is expressly permitted by applicable law notwithstanding this limitation.

Analysis

This clause implies that Microsoft requests that you do not attempt to discover anything about how the software works, how it stores its data, in what format it stores its data, nor how it communicates with other software, among other things. Laws within your country may negate this requirement, however.

As many business solutions require integration with other software items, and often, these other software items *must* be programmed to interoperate with Microsoft software so that data can be exchanged, this particular clause can raise serious business-continuity and control issues, which you should consult your IT services colleagues or service provider about.

An example of where this may be a problem follows. If you purchase a software product to help run your business, and after some time, the maker of the software product decides that it is not in their interests to continue to produce a version of that software product, then they may discontinue sales and support. You may continue to use that product, but there may be instances of errors of policy, design or systemic application-specific issues which become evident over time, for example, something akin to the problems which arose with *Year 2000* date-input formats, where you may have problems using the aforementioned software beyond a certain sunset date. However, you may by then, have many years' data locked-up in that application. Due to you assigning your rights to reverse-engineer parts of the application software covered by this license, you may face additional problems in trying to recover that data.

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6. TERMINATION. Without prejudice to any other rights, Microsoft may cancel this EULA if you do not abide by the terms and conditions of this EULA, in which case you must destroy all copies of the Product and all of its component parts.

Analysis

If you do not comply with all the terms and conditions of this license, you give Microsoft the right to stop you from using all the software covered by this license. Further, they will not give you any refunds.

As an example of where this may cause serious issues, if you are using this software to run your business, and Microsoft twigs to the fact that you have been accessing your office workstation from your home PC, over PCAnywhere (or equivalent,) then you are technically in breach of license, and it is within Microsoft's legal right to cause you to stop using their software.

7. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS.

* NetMeeting/Remote Assistance/Remote Desktop Features. The Product contains NetMeeting, Remote Assistance, and Remote Desktop technologies that enable the Product or other applications installed on the Workstation Computer to be used remotely between two or more computers, even if the Product or application is installed on only one Workstation Computer. You may use NetMeeting, Remote Assistance, and Remote Desktop with all Microsoft products; provided however, use of these technologies with certain Microsoft products may require an additional license. [...]

Analysis

You are allowed to use the inbuilt remote-display facilities within this software.

* Consent to Use of Data. You agree that Microsoft and its affiliates may collect and use technical information gathered in any manner as part of the product support services provided to you, if any, related to the Product.

Analysis

You give Microsoft the rights to collect information about your system and your use of the system.

This may or may not be an issue, depending on whether or not you trust Microsoft, or other third party suppliers in general.

Microsoft may use this information solely to improve our products or to provide customized services or technologies to you. Microsoft may disclose this information to others, but not in a form that personally identifies you.

Analysis

You give Microsoft the rights to supply other organisations with this information.

This may or may not be an issue, depending on whether or not you trust these other firms. The problem of course, is that you do not know who these other firms may be.

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Further, no mention is made of exactly what information is collected. No details are provided of exactly how Microsoft is able to make the statement that no 'personally identifying' information will be passed on to other firms. No process is provided for independent 3rd-party review of this whole system, nor is there some form of independent ombudsmen, who is given mandate and authority to review complaints by individual users who might make claims of privacy abuse.

Internet Gaming/Update Features. If you choose to utilize the Internet gaming or update features within the Product, it is necessary to use certain computer system, hardware, and software information to implement the features. By using these features, you explicitly authorize Microsoft or its designated agent to access and utilize the necessary information for Internet gaming and/or updating purposes. Microsoft may use this information solely to improve our products or to provide customized services or technologies to you. Microsoft may disclose this information to others, but not in a form that personally identifies you.

Analysis

You give Microsoft the rights to collect for itself information about your system via the Internet, and supply other organisations with this information.

This may or may not be an issue, depending on whether or not you trust Microsoft and these other firms. The problem of course, is that you do not know who these other firms may be.

* Internet-Based Services Components. The Product contains components that enable and facilitate the use of certain Internet-based services. You acknowledge and agree that Microsoft may automatically check the version of the Product and/or its components that you are utilizing and may provide upgrades or fixes to the Product that will be automatically downloaded to your Workstation Computer.

Analysis

You give Microsoft the right to make changes to your computer, without them asking you.

This can have possibly critically-serious consequences, if for some reason the software that Microsoft installs on your computer may cause other, (important-to-you) software on that computer, to stop working. You may not know that Microsoft has enacted a change to your platform, and you may spend a substantial amount of time investigating this application software failure which has arisen, totally oblivious to that fact that your computer was changed without you knowing.

* Security Updates. Content providers are using the digital rights management technology ("Microsoft DRM") contained in this Product to protect the integrity of their content ("Secure Content") so that their intellectual property, including copyright, in such content is not misappropriated. Owners of such Secure Content ("Secure Content Owners") may, from time to time, request Microsoft to provide security related updates to the Microsoft DRM components of the Product ("Security Updates") that may affect your ability to copy, display and/or play Secure Content through Microsoft software or third party applications that utilize Microsoft DRM.

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Analysis

If you listen to music or watch videos on your computer, you give Microsoft the right to install systems technology which may prevent you from moving, copying or watching this content, or making archive or backup copies.

You therefore agree that, if you elect to download a license from the Internet which enables your use of Secure Content, Microsoft may, in conjunction with such license, also download onto your computer such Security Updates that a Secure Content Owner has requested that Microsoft distribute. Microsoft will not retrieve any personally identifiable information, or any other information, from your computer by downloading such Security Updates.

Analysis

Further, you also grant to Microsoft the right to install systems-technology on your computer, which originates from record companies, music-industry consortia or movie industry bodies, which may prevent you from moving, copying or even watching this content. This is likely to prevent you making backup copies of any music CDs or of any DVDs you may have purchased, contravening many years of accepted and legal fair-use doctrine.

8. NOT FOR RESALE SOFTWARE. Product identified as "Not for Resale" or "NFR," may not be resold, transferred or used for any purpose other than demonstration, test or evaluation.

Analysis

In *toto*, specially marked products from Microsoft are to be used only as specified.

9. ACADEMIC EDITION SOFTWARE. To use Product identified as "Academic Edition" or "AE," you must be a "Qualified Educational User." For qualification-related questions, please contact the Microsoft Sales Information Center/One Microsoft Way/Redmond, WA 98052-6399 or the Microsoft subsidiary serving your country.

Analysis

Academic versions of the software are to be used only by students or other qualified users.

As this definition may be a little gray, particularly once the first user sells their copy on to others, this requirement may raise possible breach of license or litigation problems if you are not sure if you are a 'Qualified Educational User'.

10. EXPORT RESTRICTIONS. You acknowledge that the Product is of U.S. origin and subject to U.S. export jurisdiction. You agree to comply with all applicable international and national laws that apply to the Product, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by U.S. and other governments. [...]

Analysis

Your use of this product needs to comply with the export restrictions of the USA, even if you are not a US citizen. Although you are agreeing to this, it is unclear how this would be enforced. Historical examples of this are the technology behind PGP encryption - encryption levels that are

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legal and in widespread use by governments in some countries, are illegal in USA.

There are numerous, complex destination restrictions enacted by the US government, which you need to be aware of if you are taking this software with you on your travels, or if you intend of disposing of this product to a user in another countries.

11. LIMITED WARRANTY FOR PRODUCT ACQUIRED IN THE US AND CANADA.

Microsoft warrants that the Product will perform substantially in accordance with the accompanying materials for a period of ninety days from the date of receipt.

Analysis

Microsoft states that this product will perform as per the marketing material claims made of this product, *but only for the first 90 days*. This is presumably unless your state or country laws specify otherwise.

If an implied warranty or condition is created by your state/jurisdiction and federal or state/provincial law prohibits disclaimer of it, you also have an implied warranty or condition, **BUT ONLY AS TO DEFECTS DISCOVERED DURING THE PERIOD OF THIS LIMITED WARRANTY (NINETY DAYS)**.

Analysis

If something goes wrong with the software, Microsoft will consider a warranty, *but only in the first 90 days*. This is presumably unless your state or country laws specify otherwise.

AS TO ANY DEFECTS DISCOVERED AFTER THE NINETY (90) DAY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY KIND. Some states/jurisdictions do not allow limitations on how long an implied warranty or condition lasts, so the above limitation may not apply to you.

Analysis

Microsoft provides NO WARRANTY to you, after the first 90 days.

Any supplements or updates to the Product, including without limitation, any (if any) service packs or hot fixes provided to you after the expiration of the ninety day Limited Warranty period are not covered by any warranty or condition, express, implied or statutory.

Analysis

Any fixes, updates, or patches for the software covered by this license, carry NO WARRANTY to you at all. Thus, if you download and install (or, as indicated by this license, Microsoft downloads and automatically installs) any software on to you computer, and things stop working, you have no legal recourse for relief from Microsoft whatsoever.

LIMITATION ON REMEDIES; **NO CONSEQUENTIAL OR OTHER DAMAGES.** Your exclusive remedy for any breach of this Limited Warranty is as set forth below. Except for any refund elected by Microsoft, **YOU ARE NOT ENTITLED TO ANY DAMAGES, INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL DAMAGES**, if the Product does not meet Microsoft's Limited Warranty, and, to the maximum extent allowed by applicable law, even if any remedy fails of its essential

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purpose.

Analysis

You agree that regardless of what degree of damage this software may cause, *at absolute best*, Microsoft will only refund any payment you have outlaid for this software.

The terms of Section 13 below ("Exclusion of Incidental, Consequential and Certain Other Damages") are also incorporated into this Limited Warranty. Some states/ jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. **This Limited Warranty gives you specific legal rights. You may have others which vary from state/jurisdiction to state/jurisdiction.**

Analysis

As you may live in a country or territory where the law ascribes more rights to you with respect to recourse for relief, it is worth seeking legal advice on this matter.

YOUR EXCLUSIVE REMEDY. Microsoft's and its suppliers' entire liability and your exclusive remedy shall be, at Microsoft's option from time to time exercised subject to applicable law, (a) return of the price paid (if any) for the Product, or (b) repair or replacement of the Product, that does not meet this Limited Warranty and that is returned to Microsoft with a copy of your receipt.

Analysis

You agree that Microsoft's sole financial responsibility to you, if their software has catastrophic failure, is to either refund your payment for the software, or repair/replace the software.

Obviously, the second option is only for any physically defective package materials (such as damaged CD Rom.) Having Microsoft replace the software executable binaries with exact replicas, will doubtless give rise to the same problems, so is of no benefit to you.

You will **receive the remedy elected by Microsoft without charge, except that you are responsible for any expenses you may incur (e.g. cost of shipping the Product to Microsoft).**

Analysis

You give Microsoft the right to choice how it will refund you. You agree that you will pay any transportation costs.

This Limited Warranty is **void if failure of the Product has resulted from accident, abuse, misapplication, abnormal use or a virus.** Any replacement Product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

Analysis

If the defect in Microsoft's software can be shown to be caused by something not directly created or effected by Microsoft, for example by your incorrect use of the software, then they are absolved of proffering a refund.

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Analysis

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Analysis

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Analysis

You agree that Microsoft is to be *held above blame* and that all manner of warranties about this software are explicitly *removed*, including (in general and broadly understandable terms):

- ◆ that this software is at all worthwhile and in a commercially marketable form
- ◆ that this software does something useful
- ◆ that this software does something that you believe it should, based on the marketing of the software
- ◆ that this software does not contain viruses
- ◆ that this software will continue to work (at all)
- ◆ that this software will give correct answers for valid inputs
- ◆ that this software was built by capable programmers
- ◆ that this software was developed and distributed with no negligence on Microsoft's part.

ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT WITH REGARD TO THE PRODUCT.

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Analysis

Here, by excluding implied covenant *quiet enjoyment*, the EULA is removing the user's rights to use the software as they see fit, and neutralising the right the user has to be left alone in the 'quiet enjoyment' of the use of this software. The covenant essentially states that a user has the right to use the software without interference by the software publisher.

By excluding the the right to *quiet possession*, the EULA is removing the user's right to privacy and peaceable usage of this software. By analogy, someone who is renting a house does possess the implied right of *quiet possession*, whereby the landlord cannot intrude on the renter's privacy (for example, by entering the house when the renter is not there, through the use of a master key.)

Also, Microsoft disclaims that this software will not infringe on the intellectual property rights of others. This is a potentially serious issue, as has been recently shown through the legal dispute between Timeline Inc. and Microsoft. Timeline has won a recent ruling which exposes all Microsoft SQL Server developers to a serious patent encumbrance. The following was reported in the trade-press:

The judgment concerns a contract dispute between Timeline Inc. and Microsoft, over three patents relating to datamarts. In Microsoft's interpretation of its licence with Timeline, published in a press release in July 1999, "all users of Microsoft SQL Server 7, Office 2000 and other Microsoft products that utilize this type of technology are unencumbered by Timeline's patents."

Timeline disagreed. The Washington Court of Appeal judgement plumped for the company. The company reckons that some SQL Server developers could face bills in the millions of dollars. The "damages they face may be material to Timeline's future financial results," Charles Osenbaugh, Timeline's president and CEO.

(Sources: <http://www.theregister.co.uk/content/53/29419.html> and <http://news.com.com/2100-1001-985359.html>)

13. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER

Analysis

Regardless of what catastrophic failure or problems arise from this software, Microsoft will not be held responsible, nor will it be liable for any damages whatsoever.

(INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR

Analysis

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CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR

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Analysis

If your business relies on Microsoft's software, which somehow fails, causing your business (in turn) to stop or fail, you cannot sue Microsoft.

PERSONAL INJURY,

Analysis

If you or a 3rd party is injured as a direct result of errors within Microsoft's software, you cannot sue Microsoft.

FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD

Analysis

If your privacy is lost (or reduced) due to flaws in Microsoft's software, you have no legal recourse for relief.

FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER

Analysis

The EULA seeks that you give the software publisher the freedom to be negligent, to act in bad faith and to commit otherwise onerous and unacceptable acts, without the user bringing action against them.

PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PRODUCT, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE PRODUCT OR OTHERWISE ARISING OUT OF THE USE OF THE PRODUCT, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS EULA,

Analysis

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Analysis

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Product. [...]

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Analysis

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Analysis

There are special provisions made with respect to users who are U.S federal government staff. This doesn't affect everyone else.

17. **APPLICABLE LAW.** If you acquired this Product in the United States, this EULA is governed by the laws of the State of Washington. If you acquired this Product in Canada, unless expressly prohibited by local law, this EULA is governed by the laws in force in the Province of Ontario, Canada; and, in respect of any dispute which may arise hereunder, you consent to the jurisdiction of the federal and provincial courts sitting in Toronto, Ontario. If this Product was acquired outside the United States, then local law may apply.

Analysis

If you live in North American states or provinces other than Washington and Ontario, there is extra effort and expense involved in any form of legal action you may bring to bear against Microsoft.

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Analysis

Regardless of whatever else you may understand of the relationship or agreement between you and Microsoft, this license over-rides it.

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Analysis

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Some comments on the GPL

This license is considerably less replete with 'legalese', and is much easier for the average person to understand, so, in general requires less of any pre-digested commentary by the authors. However, in continuing with the concept of applying the same analysis process to both licenses, we will attempt to paraphrase, in hopefully simpler terms, the GPL, just as we did the EULA.

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Analysis

This GPL differs from the EULA, which does not offer explicit rights to copy the license.

Preamble

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Analysis

This license begins by discussing the freedoms it allocates to users. Although the GPL says that it 'is intended to guarantee your freedom to share and change free software', it actually achieves this by making guarantees which amount to the right of *the software itself* to be unencumbered. User freedoms are an almost inevitable consequence of this guarantee of freedom for *the software*.

This is analogous to underwriting the freedom of a country by defending the freedom of each individual in that country instead of defending the country as a whole and directly.

The GPL's core intention is to ensure that the software systems released under its license are allowed to be copied and modified by users, in perpetuity.

This translates to the fact that once you, the user, acquires any software licensed under the GPL, you can do pretty much anything you want with it, as long as you don't have any intention of re-distributing it to others, at which point, you need to be mindful of the ongoing prevalence of the GPL over that re-distributed software.

You are therefore free to copy and install this software as often as you like. You are free to reverse-

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engineer the software. You are free to learn from the software. You are free to change to software to enact any new features or extensions that you or your business needs. If you are not a programmer, you are free to hire external programmers to fulfill these needs.

When we speak of free software, we are referring to freedom, not price. Our General Public Licenses are designed to make sure that you have the freedom to distribute copies of free software (and charge for this service if you wish), that you receive source code or can get it if you want it, that you can change the software or use pieces of it in new free programs; and that you know you can do these things.

Analysis

As a user of GPL-licensed software are allowed to copy, modify and redistribute this software.

You are able to charge for the service of copying this software source code. There is no limit to the amount of money you can charge for this service. The presumption is: as much as the market can bear.

However, there is no license *cost* in using this software. i.e, there is no per-seat or per-computer price. Any price you may have paid to acquire this software is merely for the service-component of delivering the software unto you.

You are able to use parts of this software within your own software, as long as you intend to either keep this software 'in-house' or release your modifications to a wider audience as software licensed under the GPL.

To protect your rights, we need to make restrictions that forbid anyone to deny you these rights

Analysis

The core restriction in the GPL is that which precludes one party from preventing another party exercising their rights to copy, modify and re-distribute the software.

or to ask you to surrender the rights. These restrictions translate to certain responsibilities for you if you distribute copies of the software, or if you modify it.

Analysis

Under the GPL, the only onus on you, the user, is if you intend on distributing copies of the software, or modifying it.

For example, if you distribute copies of such a program, whether gratis or for a fee, you must give the recipients all the rights that you have. You must make sure that they, too, receive or can get the source code. And you must show them these terms so they know their rights.

Analysis

If you do decide to distribute a software program licensed under the GPL, you must ensure that the

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users you distribute to receive the same rights to copy, modify and re-distribute the same software program.

We protect your rights with two steps: (1) copyright the software, and (2) offer you this license which gives you legal permission to copy, distribute and/or modify the software.

Analysis

The GPL claims to provide coverage for the rights of users to copy, modify and re-distribute the software, in perpetuity. It sets itself the task of ensuring these rights are retained.

Also, for each author's protection and ours, we want to make certain that everyone understands that there is no warranty for this free software.

Analysis

As there is no charge for the license of this software, there is NO WARRANTY whatsoever.

If the software is modified by someone else and passed on, we want its recipients to know that what they have is not the original, so that any problems introduced by others will not reflect on the original authors' reputations.

Analysis

If you do modify and redistribute this software, you must make it known that this is the case within the documentation of that software, bundled with the software.

As much of the emphasis within the Free/Open Source developer community is placed on individual credentials and the regard given to high-quality programmers within this community, it is important that the framework offered by this arrangement protect individual programmer's reputations.

Finally, any free program is threatened constantly by software patents. We wish to avoid the danger that redistributors of a free program will individually obtain patent licenses, in effect making the program proprietary. To prevent this, we have made it clear that any patent must be licensed for everyone's free use or not licensed at all.

Analysis

The Free/Open Source software community has expressly stated in the past that software patents are problematic and where-ever possible, should be avoided. However, if software patents are applied to software released under the GPL, then the patent should specifically permit fully-compliant operation of the GPL rights (i.e. to freedom to copy, re-use, re-distribute.)

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Analysis

Notes on how to tell if a program is licensed under the terms of the GPL.

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Analysis

A clear delineation is made on what this license covers and what it does not. The GPL only covers the copying, modification and redistribution of software.

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Analysis

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You may charge a fee for the physical act of transferring a copy,

Analysis

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and you may at your option offer warranty protection in exchange for a fee.

Analysis

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2. You may modify your copy or copies of the Program or any portion of it, thus forming a work based on the Program, and copy and distribute such modifications or work under the terms of Section 1 above, provided that you also meet all of these conditions:

Analysis

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a) You must cause the modified files to carry prominent notices stating that you changed the files and the date of any change.

Analysis

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b) You must cause any work that you distribute or publish, that in whole or in part contains or is derived from the Program or any part thereof, to be licensed as a whole at no charge to all third parties under the terms of this License.

Analysis

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Analysis

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Analysis

If you have software code which can exist and function separately to the software which was licensed under the terms of the GPL, then that software does not need to be licensed under a GPL license. If, however, you distribute that same separable code with the GPL software, then this code also falls under the GPL license.

You are thus free to create software code which can run standalone, and can license this as you wish. If, however, you integrate this same code and distribute it with GPL software, then that software must also be licensed under the GPL.

Thus, it is not the intent of this section to claim rights or contest your rights to work written entirely by you; rather, the intent is to exercise the right to control the distribution of derivative or collective works based on the Program.

Analysis

The stated intention of the GPL is to protect the rights of those who released their code under the GPL. Care must therefore be exercised when integrating code which you do not want to make available as GPL code, with GPL code.

It is advisable that you seek as much information and perhaps legal advice if you plan on integrating your software source-codes with GPL software source-codes, for the purpose of integration to others,

In addition, mere aggregation of another work not based on the Program with the Program (or with a work based on the Program) on a volume of a storage or distribution medium does not bring the other work under the scope of this License.

Analysis

The GPL clearly states that simply bundling your non-GPL code with GPL software on a disk or other media, does not make your code available under the terms of the GPL.

3. You may copy and distribute the Program (or a work based on it, under Section 2) in object code or executable form under the terms of Sections 1 and 2 above provided that you also do one of the following:

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Analysis

You are able to make compiled/machine-executable versions of the source (i.e programmer-readable) code available to others.

a) Accompany it with the complete corresponding machine-readable source code, which must be distributed under the terms of Sections 1 and 2 above on a medium customarily used for software interchange; or,

Analysis

As long as you also ensure you bundle the source code for this software, or

b) Accompany it with a written offer, valid for at least three years, to give any third party, for a charge no more than your cost of physically performing source distribution, a complete machine-readable copy of the corresponding source code, to be distributed under the terms of Sections 1 and 2 above on a medium customarily used for software interchange; or,

Analysis

Ensure you supply the recipients of this compiled/machine-executable code with access to the corresponding source (i.e programmer-readable) code. You can charge a nominal fee for this service, or

c) Accompany it with the information you received as to the offer to distribute corresponding source code. (This alternative is allowed only for noncommercial distribution and only if you received the program in object code or executable form with such an offer, in accord with Subsection b above.)

Analysis

Ensure that the next recipient receives the same information about accessing the source (i.e programmer-readable) code.

The source code for a work means the preferred form of the work for making modifications to it. For an executable work, complete source code means all the source code for all modules it contains, plus any associated interface definition files, plus the scripts used to control compilation and installation of the executable. However, as a special exception, the source code distributed need not include anything that is normally distributed (in either source or binary form) with the major components (compiler, kernel, and so on) of the operating system on which the executable runs, unless that component itself accompanies the executable.

Analysis

This section discusses the types of files that need to be included to ensure that the redistributed source code is compilable.

If distribution of executable or object code is made by offering access to copy from a designated place, then offering equivalent access to copy the source code from the same place counts as

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distribution of the source code, even though third parties are not compelled to copy the source along with the object code.

Analysis

If you make available compiled/machine-executable software code from an access point, then making available the source (i.e programmer-readable) code from that same access point is enough to comply with the requirements of the GPL.

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Analysis

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Analysis

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Analysis

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Analysis

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