# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>xiii</td>
</tr>
<tr>
<td>Foreword</td>
<td>xv</td>
</tr>
<tr>
<td><strong>Chapter 1</strong></td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td><strong>Chapter 2</strong></td>
<td></td>
</tr>
<tr>
<td>Genesis of the Institution</td>
<td>9</td>
</tr>
<tr>
<td>2.1. Introduction</td>
<td>9</td>
</tr>
<tr>
<td>2.2. Open Source Software: Early Developments and Evolution</td>
<td>10</td>
</tr>
<tr>
<td>2.2.1. Property Domains</td>
<td>10</td>
</tr>
<tr>
<td>2.2.2. ‘Opening’ of Software ‘Freedom’</td>
<td>17</td>
</tr>
<tr>
<td>2.2.3. Defining Open Source Software</td>
<td>22</td>
</tr>
<tr>
<td>2.3. Conclusion</td>
<td>26</td>
</tr>
<tr>
<td><strong>Chapter 3</strong></td>
<td></td>
</tr>
<tr>
<td>The Legal Governance Structure</td>
<td>29</td>
</tr>
<tr>
<td>3.1. Introduction</td>
<td>29</td>
</tr>
<tr>
<td>3.2. Legal Governance Structure of Open Source Software</td>
<td>30</td>
</tr>
<tr>
<td>3.2.1. Existing Intellectual Property Protection and Open Source Software</td>
<td>31</td>
</tr>
<tr>
<td>3.2.1.1. Trade Secret Protection</td>
<td>32</td>
</tr>
<tr>
<td>3.2.1.2. Copyright Protection</td>
<td>33</td>
</tr>
<tr>
<td>3.2.1.3. Moral Rights</td>
<td>37</td>
</tr>
<tr>
<td>3.2.1.4. Patent Protection</td>
<td>39</td>
</tr>
<tr>
<td>3.2.1.5. Trademarks</td>
<td>43</td>
</tr>
<tr>
<td>3.2.2. Existing Contractual-License Protection and Open Source Software</td>
<td>44</td>
</tr>
<tr>
<td>3.3. Conclusion</td>
<td>46</td>
</tr>
</tbody>
</table>
Chapter 4
The Licensing Regime 47
4.1. Introduction 47
4.2. A Taxonomy of Licenses 48
   4.2.1. GNU General Public License (GPL) and Other Related Licenses 51
   4.2.2. The Berkeley Software Distribution (BSD) and Other Related Licenses 54
   4.2.3. The Mozilla Public License and Related Commercial Licenses 56
   4.2.4. Other Open Source Software Licenses 59
4.3. Conclusion 60

Chapter 5
Licensing and Rights Management 61
5.1. Introduction 61
5.2. Groundwork Definitions 62
5.3. The Granting Clause 64
   5.3.1. Intellectual Property Grant 65
      5.3.1.1. Copyright Grant 65
      5.3.1.2. Patent Grant 70
      5.3.1.3. Trademarks Grant 75
   5.3.2. Other Aspects of the Granting Clause 77
      5.3.2.1. Character 77
      5.3.2.2. Sublicensing 78
      5.3.2.3. Territorial Extent 79
5.4. Exclusions, Term, Revocation and Termination 80
   5.4.1. Exclusions from the Granting Clause 80
   5.4.2. Term 81
   5.4.3. Revocation of License 82
   5.4.4. Termination Issues 84
5.5. Conclusion 88

Chapter 6
Improvements Management: Licensing and Copyright Law 89
6.1. Introduction 89
6.2. Copyleft and Infectious Terms 90
6.3. Copyleft Triggers 95
   6.3.1. Modification 96
   6.3.2. Aggregation and Compilation 105
   6.3.3. Distribution 108
6.4. Technical Issues and Scope of Infection 114
   6.4.1. System Libraries 116
   6.4.2. Kernel Modules 119
   6.4.3. Source Code Editors and Compilers 120
6.5. Conclusion 121
Chapter 7

Improvements Management: Patent Law 123

7.1. Introduction 123
7.2. Patents: Angst and Agenda 124
  7.2.1. Protection against Patents 126
  7.2.2. Patent Retaliation/ Peace Provision 128
  7.2.3. ‘Knowing Reliance’ and Downstream Users 130
  7.2.4. Cross-License Restriction 132
7.3. Conclusion 135

Chapter 8

The Case for Interoperability 137

8.1. Introduction 137
8.2. The Interoperability Scenario: Angst 140
  8.2.1. Technological Protection Measures 140
  8.2.2. Trusted Computing 141
  8.2.3. Technological Tweaking 145
  8.2.4. Law and Reverse Engineering 147
  8.2.5. Contract and License Restrictions 154
8.3. The Interoperability Scenario: Agenda 156
  8.3.1. GPLv3 License Provision 156
  8.3.2. Patents and Interoperability 161
8.4. Conclusion 162

Chapter 9

Challenges: Issues in Law 163

9.1. Introduction 163
9.2. Principle of Exhaustion 163
  9.2.1. Principle of Exhaustion under Copyright Law 163
    9.2.1.1. U.S.A. 164
    9.2.1.2. E.U. 166
  9.2.2. Principle of Exhaustion under Patent Law 169
9.3. The Unclean Hands Defence 170
9.4. The Misuse Doctrine 170
  9.4.1. The Patent Misuse Doctrine 171
  9.4.2. The Copyright Misuse Doctrine 173
    9.4.2.1. U.S.A. 173
    9.4.2.2. E.U. 176
9.5. Implied License 178
9.6. Conclusion 181

Chapter 10

Challenges: Issues in Licensing 183

10.1. Introduction 183
10.2. Project Management 183
12.3.3. Evolving Landscape of Technology-Law Interaction 259
12.3.4. Legal Recognition of Protection for Evolving
    Technological Arenas 260
12.3.5. International Harmonization of Laws 262
12.4. Evolving Property Rights Jurisprudence in Context of
    Software 263
12.5. Conclusion 269

Chapter 13
Software Protection: Revisiting the Sui Generis Option 271
13.1. Introduction 271
13.2. Proposal for a Model Software Law 272
    13.2.1. Conditions for Grant of Protection 273
        13.2.1.1. Originality-Novelty Balance 274
        13.2.1.2. Technical Advance 276
        13.2.1.3. Utility 277
        13.2.1.4. Developing an Incremental Range 278
    13.2.2. Scope of Protection: General 278
    13.2.3. Scope of Protection: Incremental Innovation 280
    13.2.4. Duration of Protection 285
    13.2.5. Grant of Rights 290
    13.2.6. Limitations on Exclusive Rights 295
    13.2.7. Negotiated Licenses and Compulsory Licensing 298
    13.2.8. Infringement 301
    13.2.9. Remedies 303
    13.2.10. Dispute Resolution 304
    13.2.11. Administrative Procedure 304
    13.3. Conclusion 306

Appendices 309
Appendix I: GNU General Public License, v2 311
Appendix II: GNU General Public License, v3 319
Appendix III: The BSD License 333
Appendix IV: Mozilla Public License, v1.1 335
Appendix V: The Open Software License 3.0 345

Bibliography 349

Index 379