

# FREE SOFTWARE DISTRIBUTION AND INDIAN LAW

Mahesh T. Pai  
[paivakil@yahoo.co.in](mailto:paivakil@yahoo.co.in)

FOSS.IN, November/December, 2005 Bangalore.

30 November, 2005

Product liability and Free Software in Indian Law

# Laws Applicable to Software Distributors

Product liability and Free Software in Indian Law

# Laws Applicable to Software Distributors

- Copyright

# Laws Applicable to Software Distributors

- Copyright
- Patents

# Laws Applicable to Software Distributors

- Copyright
- Patents
- Trade/Service Marks

# Laws Applicable to Software Distributors

- Copyright
- Patents
- Trade/Service Marks
- Product Liability

# Special Laws for Free Software Distribution??

- There aren't any.

# Special Laws for Free Software Distribution??

- There aren't any.
- Same Laws apply to distribution of Free and Non-free software.



# Special Laws for Free Software Distribution??

- There aren't any.
- Same Laws apply to distribution of Free and Non-free software.
- Free Software uses known concepts in existing laws to grant back to users their freedoms.

# Indian Copyright Law

## License – I

Section 30, Copyright Act:–

<quote>

The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may **grant any interest in the right by licence in writing signed by him or by his duly authorised agent . . .**

</quote >

# Indian Copyright Law

## License – I

Section 30, Copyright Act:–

<quote>

The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may **grant any interest in the right by licence in writing signed by him or by his duly authorised agent . . .**

</quote >

Who (1) — The owner of the copyright

Who (2 )— in any existing work or the prospective owner of the copyright in any future work may

# Indian Copyright Law

## License – I

Section 30, Copyright Act:–

<quote>

The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may **grant any interest in the right by licence in writing signed by him or by his duly authorised agent . . .**

</quote >

Who (1) — The owner of the copyright

Who (2 )— in any existing work or the prospective owner of the copyright in any future work may

What — grant any interest in the right

# Indian Copyright Law

## License – I

Section 30, Copyright Act:–

<quote>

The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may **grant any interest in the right by licence in writing signed by him or by his duly authorised agent . . .**

</quote >

Who (1) — The owner of the copyright

Who (2 )— in any existing work or the prospective owner of the copyright in any future work may

What — grant any interest in the right

How — by licence in writing signed **by him or by his duly authorised agent**

# Indian Copyright Law

## License – II

- Under law, Copyright license is a unilateral grant of permissions by owner of the copy-right

# Indian Copyright Law

## License – II

- Under law, Copyright license is a unilateral grant of permissions by owner of the copyright
- Free Licenses, like GNU-GPL conform

# Indian Copyright Law

## License – II

- Under law, Copyright license is a unilateral grant of permissions by owner of the copyright
- Free Licenses, like GNU-GPL conform
- But several OSS licenses do not



# Indian Copyright Law

## License – II

- Under law, Copyright license is a unilateral grant of permissions by owner of the copyright
- Free Licenses, like GNU-GPL conform
- But several OSS licenses do not
- Free licenses provide ideal situation for avoidance of product liability for software distributors

# Product Liability

arises under

- (breach of) contract

# Product Liability

arises under

- (breach of) contract
- consumer protection law

# Product Liability

arises under

- (breach of) contract
- consumer protection law

# Product Liability

arises under

- (breach of) contract
- consumer protection law
- tortious liability

# Avoiding Product Liability

- No privity of contract
- No consideration – (free of cost)
- No duty to take care
- No knowledge of possible hazard

# Avoiding Product Liability

- No privity of contract
- No consideration – (free of cost)
- No duty to take care
- No knowledge of possible hazard

Free Software licenses satisfy all requirements

# No Avoidance of Product Liability when —

Product liability and Free Software in Indian Law



# No Avoidance of Product Liability when —

- Product/service is provided for a consideration (however small)

# No Avoidance of Product Liability when —

- Product/service is provided for a consideration (however small)
- Knowledge of possible hazards

# No Avoidance of Product Liability when —

- Product/service is provided for a consideration (however small)
- Knowledge of possible hazards
- Duty to take care rested on provider

# No Avoidance of Product Liability when —

- Product/service is provided for a consideration (however small)
- Knowledge of possible hazards
- Duty to take care rested on provider

Availability of source code eliminates one of the above ground entirely, and the third reason in part.

**End**

©, 2005, Mahesh T. Pai; paivakil@gmail.com

Unlimited distribution of and modification of this document, either in the L<sup>A</sup>T<sub>E</sub>X source or any of its output in any format, is permitted provided this notice is kept intact.