

## I. INTRODUCTION: “OPEN SOURCE” DOES NOT MEAN “PUBLIC DOMAIN”

Much attention has been garnered recently by so-called “open source software” and the ostensible mechanism by which it is distributed, “open source licensing.” Accordingly, there is much misunderstanding about what exactly is meant by “open source software” and “open source licensing.” The terms are not necessarily synonymous with either shareware or freeware, and open source software is almost certainly not in the public domain (another misunderstood and misused term of art in copyright law). Yet, these misconceptions tend to propagate rapidly as new versions and types of open source software become available to the public and as more organizations proselytize the use of open source in contravention of established “closed” proprietary software architectures, such as those promoted by companies like Microsoft.

There is nothing magical about open source software. “Open source” does not mean that it contains special, secret computer code, that it has been written in a particular “open” way, or that it is devoid of copyright protection. Indeed, this article argues that “open source,” as a construct, inherently connotes nothing about whether copyright has attached to the licensed software, nor does the term suggest that anarchistic abandonment of downstream control over the underlying computer code has occurred. Rather, this article argues that “open source” is a licensing philosophy to be employed by the owner of the copyright in the software in question in recognition of the axiom that collaboration is better than insular behavior. Said another way, the concept of “open source” teaches that two heads are better than one.