

# Open Source Software (OSS) and Intellectual Property Rights (IPR) Guidelines

October 2018

*Draft 1.0*

Open Source Software Working Group

# The purpose of this document

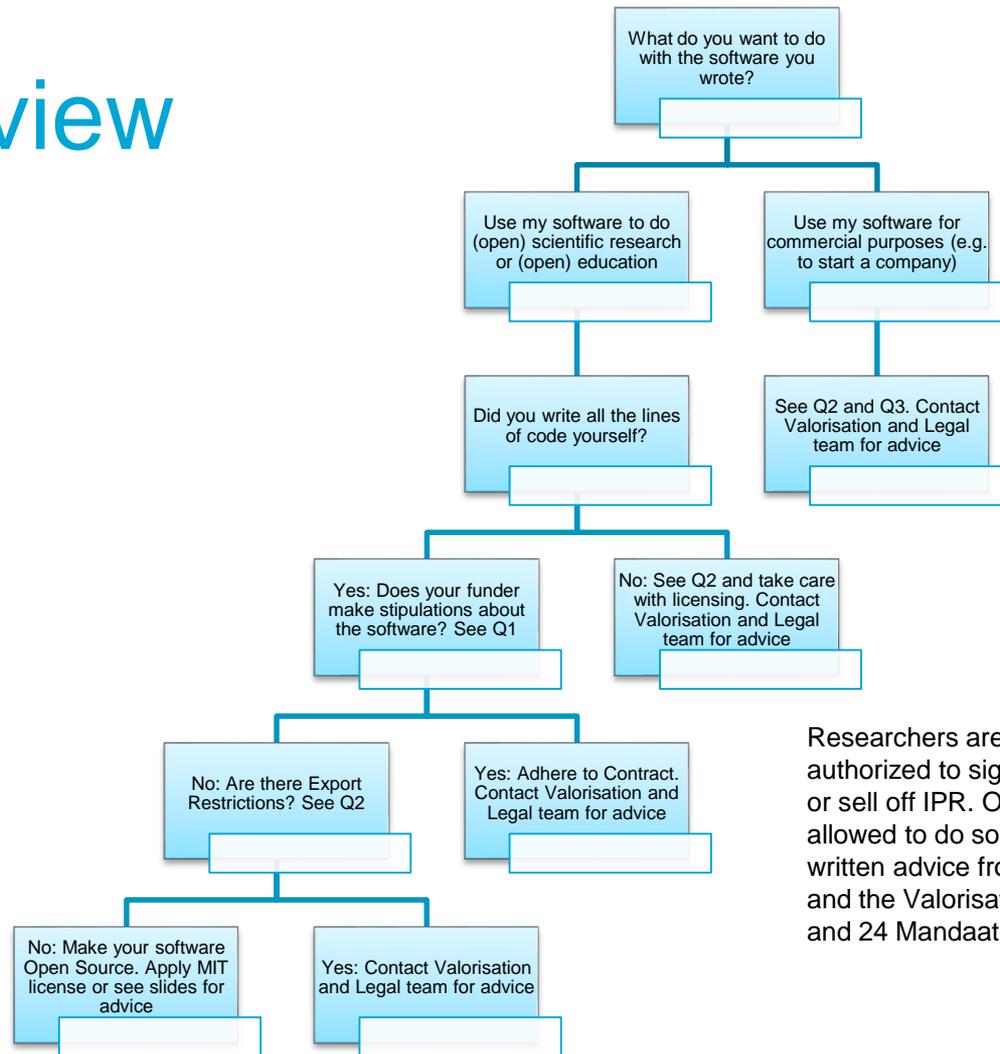
TU Delft takes the Open Science movement seriously and is investigating approaches to ensure implementation in practice. A round of consultations with researchers has led to the need for clarity on open source software as output of the researcher.

This document provides guidelines to ensure improved understanding on the generation of software, be it open source or proprietary in nature, the intent being that informed choices can be made by the researcher when creating or using software for their own output.

A multi-disciplinary working group at TU Delft has worked on the guidelines to ensure a well represented and balanced view.

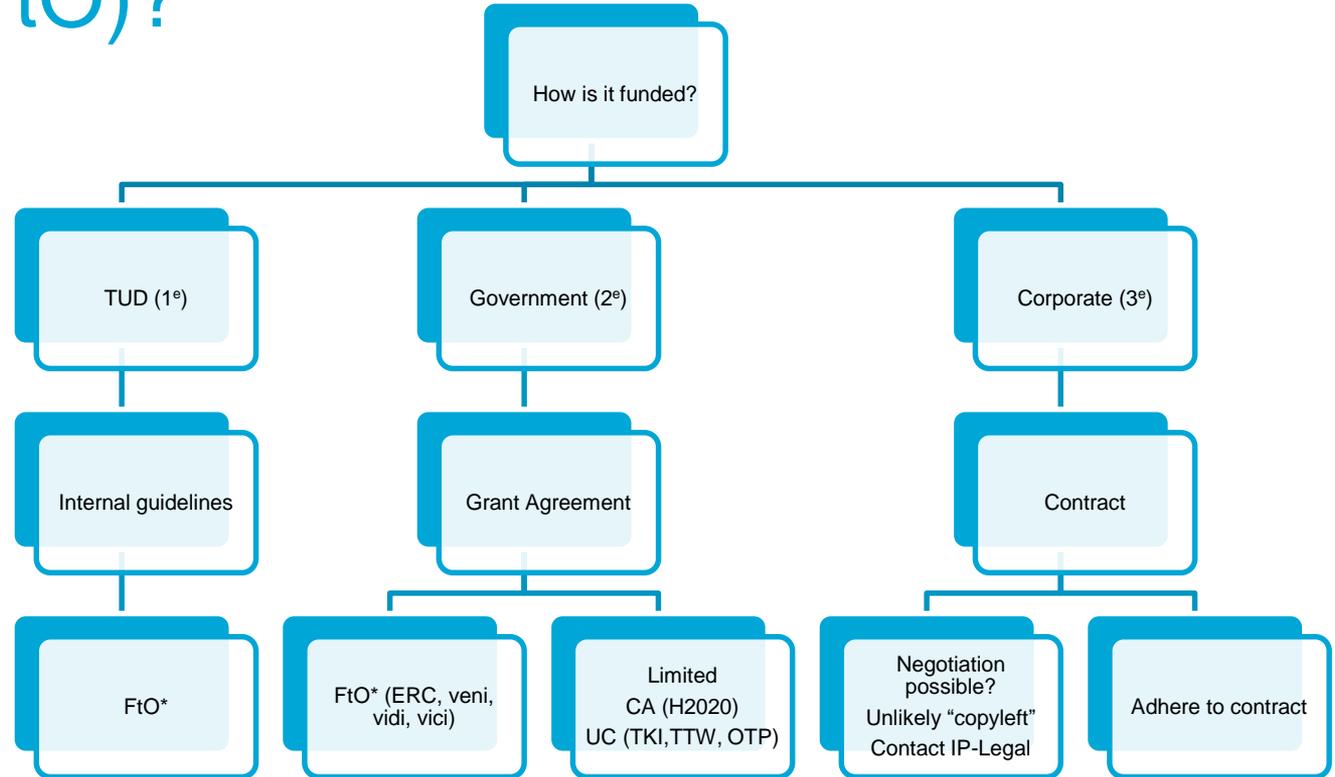
The document provides the basis for a more detailed policy document, which will be produced by the working group and presented to the TU Delft Executive Board by the end of 2018.

# Overview



Researchers are expressly not authorized to sign license agreements or sell off IPR. Only the dean is allowed to do so, after receiving written advice from the Legal Dept. and the Valorisation Centre; art 23 and 24 Mandaatregeling TU\_Delft.

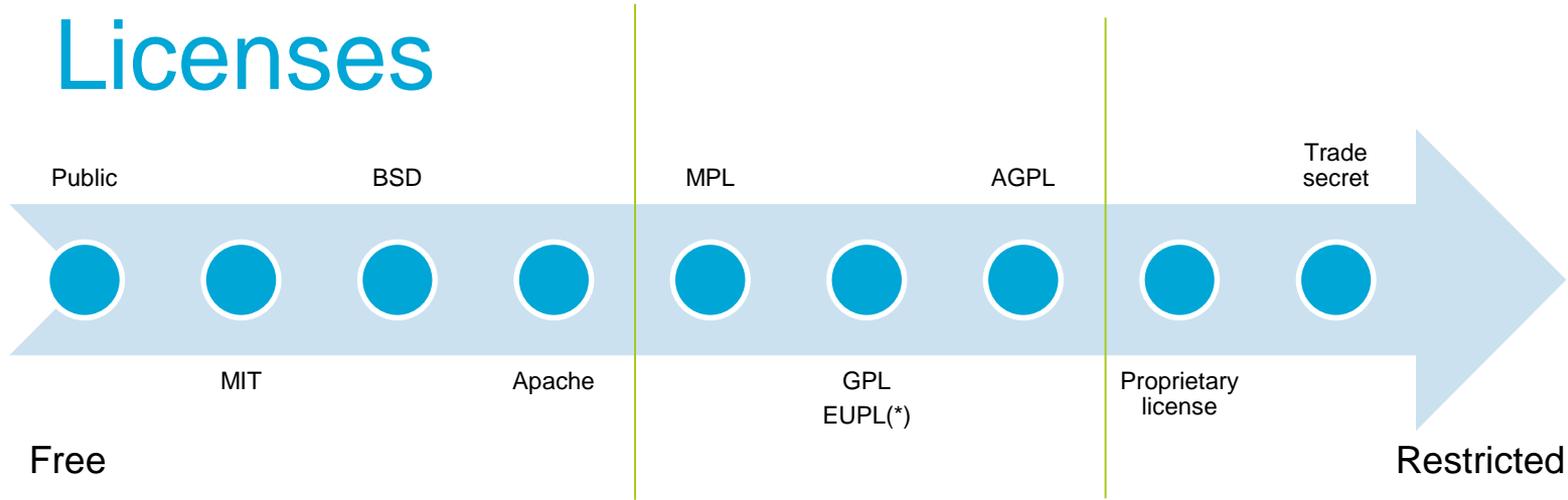
# Q.1 do you have Freedom to Operate (FtO)?



# Q.2 How much freedom do you have (really)?

- ✓ What software did you use ?
  - Not all licenses mutually compatible
  - Generally compatibility runs from
    - “permissive”-> “restricted” not other way around
- ✓ Generated with tax-payer money (1<sup>st</sup>; 2<sup>nd</sup>)?
  - EC State Aid : no €€€ benefit single company
    - (also not for an academic spin-off or start-up!)
  - As public as possible
- ✓ Export restrictions?
  - Cryptography, terrorist/military/dual uses
  - Quantum computing (see annex I COUNCIL REGULATION (EC) No 428/2009)

# Licenses



Note 1: In the majority of cases, the TU Delft holds the copyright of work produced by its employees. The TU Delft can therefore specify the license(s)

Note 2: “Free” means free, you do not get to decide what anybody does with your software (i.e to cure disease or to make more efficient land mines)

Note 3: compatibility runs the same way, generally – notable exception EUPL(!)

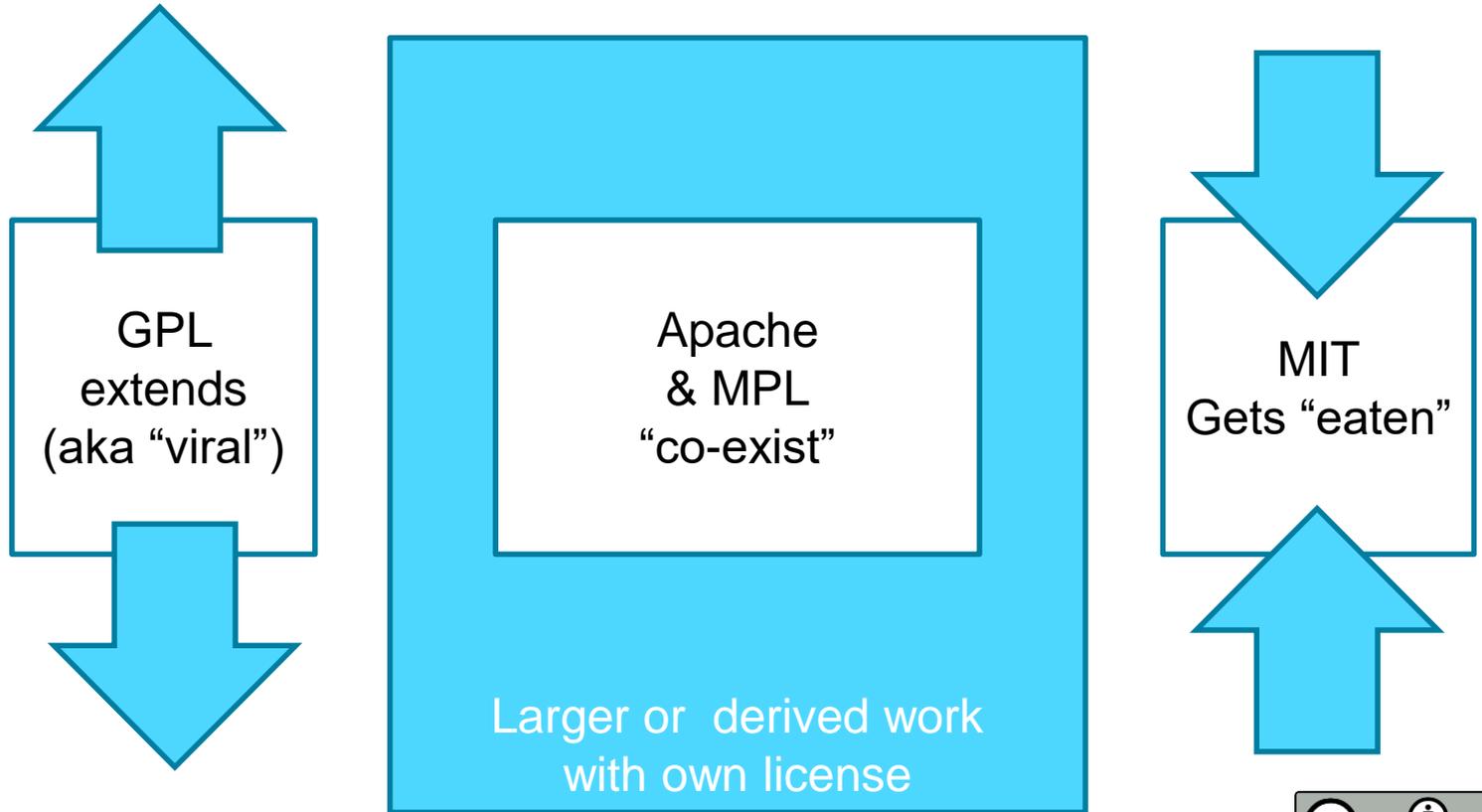
(i.e . MIT-licensed software may be distributed within a GPL-licensed codebase, whereas the opposite is not possible)

Note 4: When contributing to an open source project, you need to comply to the license already used

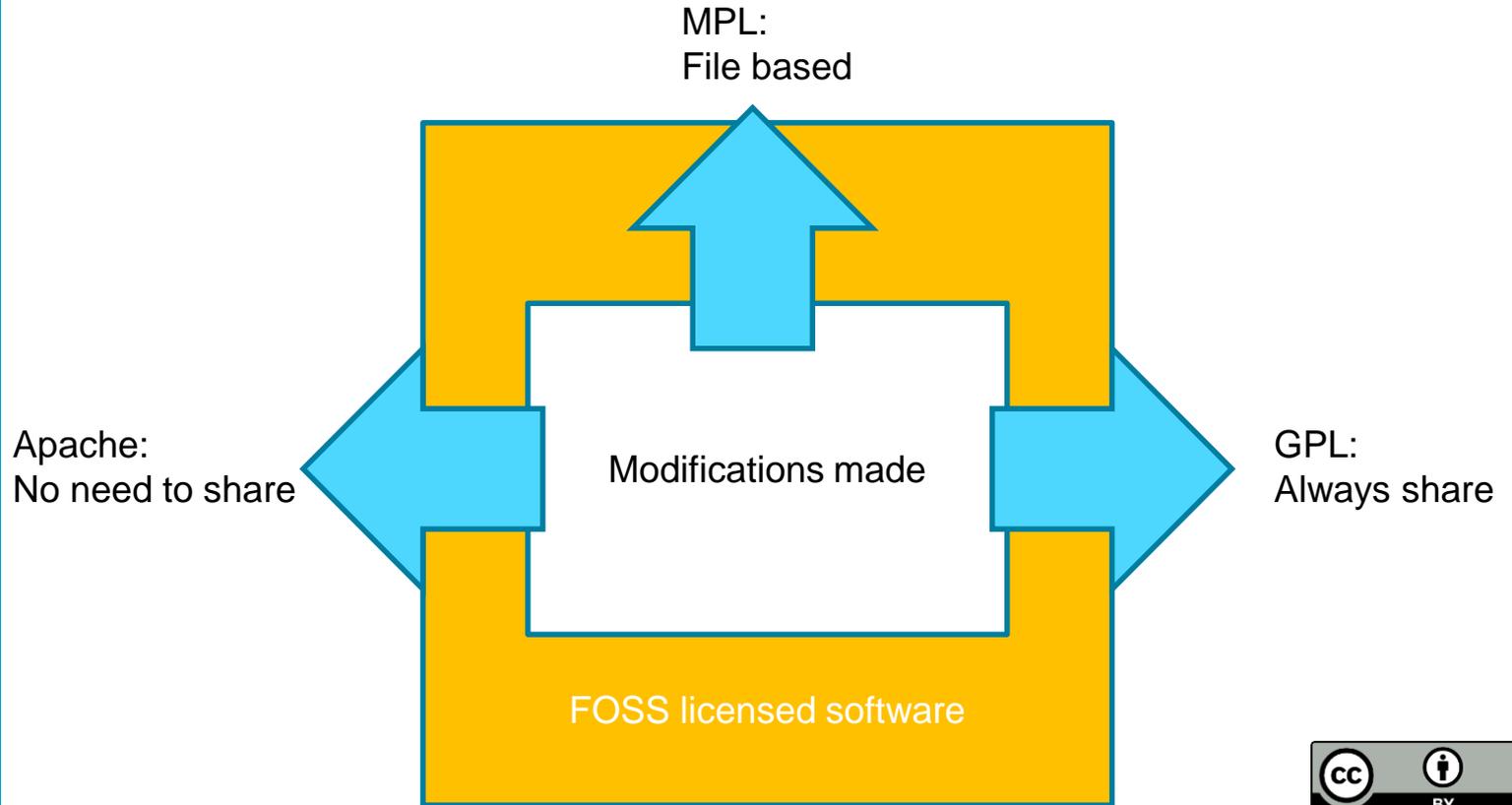
## Q.3 Commercial considerations

Type	Proprietary	Open
Positives	Protection from competitors Control Possibility to differentiate (e.g. student/academic)	Community trust Simple license Rapid growth FRAND - fair, reasonable, and non-discriminatory
Negatives	Complex licenses No/small community Need to enforce	Risk of forking No “say-so” in use Investor aversion
<b>Revenue</b>	<b>License fees</b>	<b>Service fees</b>

# Differences: derivative works



# Differences: reciprocity



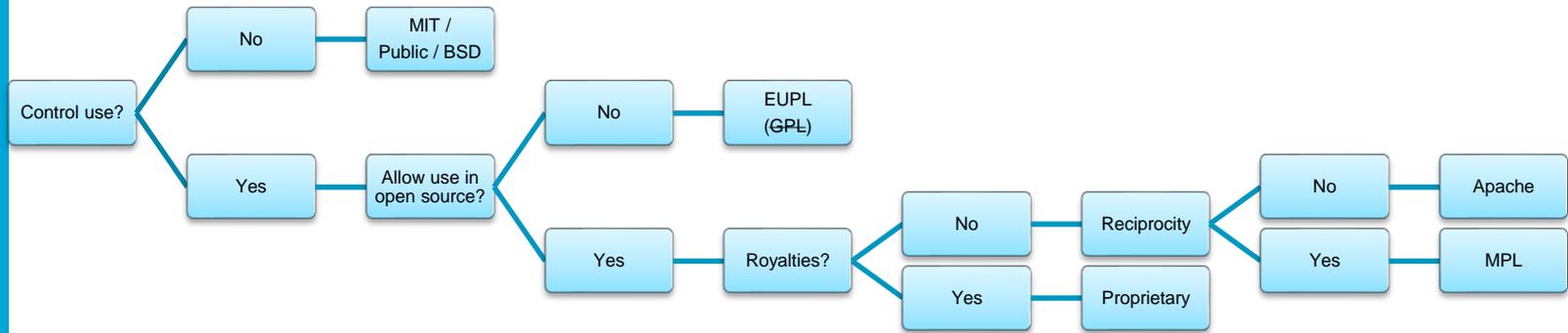
# A note on patent clauses

- Free license: (from Apache) “each Contributor hereby grants to You a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable (except as stated in this section) patent license”
- Patent retaliation: (again from Apache) “If You institute patent litigation against any entity (...), then any patent licenses granted to You under this License for that Work shall terminate as of the date such litigation is filed”

	EUPL	GPL
Type	Strong copyleft.	Strong copyleft.
OSI-approved	Yes.	Yes.
Legal language	22 linguistic versions. Valid “as is” in any of the 22 languages.	English. Need “sworn translator” in court.
Applicable law	Law of the European Union country of the Licensor, otherwise Belgium.	Local law that most closely approximates an absolute waiver of all civil liability (?)
Legal complexity	Based on civil law (“good faith principles”) short text, provisions fix principles.	Based on common law (“pacta sunt servanda”). Long, complex text, provisions address specific and technical issues in detail.
Liability & warranty	Fully in line with EU law: Consumer protection and information practices. Warrant ownership copyright. Liability in case of wilful misconduct and/or damages to persons.	Claims a general “catch-all” exclusion of warranty and liability. But not accepted by all jurisdictions, thus only “to the extent permitted by applicable law”.
Competent court	Where the Licensor resides. Other agreements are permitted.	Court is not designated.
License conflicts	No, mostly not. Pre-defined list of “interoperable licenses” (including GPL).	Yes.
Linking	Recital 15 specifically authorizes linking without copyright infringement.	“Viral effect” attached to linking (?) “Linking statically or dynamically with other modules is making a combined work. Thus, the terms and conditions of the GNU General Public License cover the whole combination”.
Specific items	Covers “Software as a Service” meaning that if an internet service provider modifies the licensed software to distribute online services (as Google does), this is “software distribution”.	Covers “Tivoisation” meaning that it prevents hardware providers to lock a protection which will not allow modified software to run on their hardware. Note: Many consider that “Tivoisation” is related to hardware protection (i.e. against theft, counterfeiting) and not software appropriation!

Note: TU Delft advises not to use a GPL

# A flowchart of different licenses



# List of Terms

- BSD – Berkeley Software Distribution
- Copyleft – Freedom to modify and distribute, but preserving some rights
- EUPL – European Public License
- Forking – copying software and developing independently
- FRAND – fair, reasonable, and non-discriminatory
- FtO – Freedom to Operate (according to the terms of the TU Delft employment contract)
- GPL – GNU general Public License
- IP – Intellectual Property
- IPR – Intellectual Property Rights
- MPL – Mozilla Public License
- OSI – Open Source Initiative [www.opensource.org](http://www.opensource.org)
- OSS – Open Source Software
- Reciprocity – if you use our license you have to use it too
- Tivoisation – prevent modified software from running on hardware
- Viral – including this software with a viral license means inheriting the license terms, leading to spreading of the license like a virus