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Dear Chris,

Thanks for responding to my letter. Our phone conversation left me feeling very encouraged that your intention is to operate within the spirit of open source as best you can given the contractual constraints imposed on you by others. But it seemed like you were unsure of the details. I hope my suggestions below will help flesh out those details for you.

At the end of our conversation, you asked me to email you two things: 1) suggestions on appropriate licensing for your new show, and 2) information on my background and areas of expertise. I'll send you something about my background in another email.

As you surely know from your years in broadcasting, doing the right thing is often not enough. You must also be seen to be doing the right thing. With respect to calling your show "Open Source," the people most likely to take exception to your choice of a name would be software developers who've worked to create the movement and freely contributed code they've written to the larger body of open source work. So that's the audience you have to convince that you're truly acting in the spirit of open source.

Of course, you also have to convince your business partners (e.g PRI, WUML, etc.) that licensing the content of your show under an open source license will not be to their detriment, and may even be to their benefit.

Before I address the question of which license makes the most sense for your radio show, let me talk about the MySQL licensing model. I think if you were to follow their licensing model, it would both give you credibility among open source supporters and also mollify your business partners.

You're probably wondering what MySQL is and why it matters. MySQL is the most commonly used open source database. Although Microsoft pretty much owns the desktop, most people who run servers greatly prefer open source software because it's more reliable, bugs are fixed much quicker (if they know how to program, they can do it themselves), and they never have to worry about the Business Software Alliance (a.k.a. the software Gestapo) knocking on their door.

For an example of what the BSA does to businesses, read what they did to guitar-string manufacturer Ernie Ball. Go to <http://www.searls.com/feb04-lfs-diyit.html> and scroll down to the section entitled "The rewards of courage." Hmmmmm ... now that I think of it, the company's president, Sterling Ball, might be an ideal person for you to interview on your new show. He's someone who doesn't know or care much about software. He just wants to run his business. And he's become a devoted fan of open source, for business reasons rather than technical reasons.

But back to the question at hand. There are four primary pieces of open source software that run most web-servers – Linux, Apache, MySQL, and PHP. These four are commonly referred to as "LAMP." Linux is the operating system, Apache is the web server, MySQL is the database, and PHP is the server-side programming language. Whenever you fetch a web-page whose name ends in ".php" it's most likely fetching its data from a MySQL database server.

Since MySQL is the best-known open source database, following MySQL's licensing model would give you automatic credibility with the very programmers you want to convince of your honorable intentions. The company that produces MySQL employs a dual licensing scheme. For customers willing to comply with the terms of an open source license, they offer their code under an open source license. For customers not willing to comply with an open source license, they offer a commercial license and they have a different pricing scheme. They give the following explanation, "The guiding business principle of

MySQL is one of fair exchange, or Quid pro Quo ('something for something'). From a licensing perspective, we have two different products depending on usage and distribution, though technically they have the same source code.” You can read about their dual licensing scheme at <http://www.mysql.com/company/legal/licensing>.

You'd want to use a different open source license than the GPL used by MySQL, since they're offering software and you're offering content. I think this dual licensing model could also go a long way toward addressing any objections your business partners may have. Anyone who wants to use your content under a traditional business model could only do so under a commercial license, which could contain any terms you desire, including disallowing reuse and redistribution. In that case, only those who are willing to comply with the terms of an open source license would be allowed to reuse your content. This should reassure PRI, etc. that ABC can't come along, grab your content, and reuse it without remuneration or attribution. Meanwhile, you'll be adding legions of bloggers and open source fans worldwide who will be allowed to reuse your content, with proper attribution of course. And their word-of-mouth will provide you free advertising of a sort you could never hope to buy, and establish your reputation as the first nationally-known journalist to recognize the benefits open source holds for radio-journalism. Businesses like PRI or NPR could use this to promote their image as public-spirited organizations.

Now, as to the question of what open source license to use – the three main organizations that deal with open source licensing are the Free Software Foundation, the Open Source Initiative, and Creative Commons.

The Free Software Foundation was founded by Richard Stallman. Since he created the GNU project as well, the FSF's web-pages can be found at <http://www.gnu.org>. Their licenses are described at <http://www.gnu.org/licenses/licenses.html>. The GNU Free Documentation license at <http://www.gnu.org/licenses/licenses.html#FDL> seems to be the closest thing to what a radio show would need, but since it's focused on printed material it would require significant modification to really be appropriate.

The Open Source Initiative is an organization founded by Eric Raymond, author of “The Cathedral and The Bazaar.” OSI was established to counter the tendency for the meaning of “open source” to get diluted as it gets more widely adopted. OSI provides certification for software licenses that conform to their Open Source Definition. Like the FSF, they too are primarily concerned with software. So the licenses they certify would not be directly applicable to radio show content. Even so, it would be a good idea for you to take a look at their definition of open source at <http://www.opensource.org/docs/definition.php> to get a solid feeling for the underlying philosophy. It's fairly short - only 10 clauses. For your purposes, it's probably more important to read the commentary labeled “Rationale” for each section, than it is to understand all the specifics of each clause.

In the end, it does seem to come back to Creative Commons. They allow you to answer yes or no to 4 different parameters.

- Attribution
- Non-commercial
- No derivative works
- Share alike

The most important parameter for staying true to the spirit of open source is to answer “yes” to “share alike.” This requires anyone who wants to distribute a work they've based on your work to make it available to others on the same terms as those under which you made your work available to them.

You'll almost certainly want to answer “yes” to “attribution” to require anyone who distributes a work based on yours to acknowledge your contribution, but not misattribute their modifications to you.

You'll want to answer “no” to “no derivative works.” Precluding derivative works definitely violates the spirit of open source.

And finally, you'll also want to answer “no” to “non-commercial.” Precluding commercial use also violates the spirit of open source.

I can see how this last point might be confusing. How come we're saying here that commercial use must be allowed? Didn't the MySQL dual licensing model have an entirely different license for commercial use? Let me explain. Under the dual licensing approach, the critical question is not whether the recipient intends to use your work (or a derivative work) commercially. The critical question is whether the recipient is willing agree that if they redistribute the work, they'll license it to others under the same open source terms they received it under. If they're willing to do that, then they can receive it under the open source license conditions.

But if they're not willing, then none of this Creative Commons/Open Source discussion is relevant. They're not going to receive it under such a license. In a typical open source licensing arrangement, that would be the end of it. They simply couldn't use your work and that would be that. The dual licensing scheme opens up another possibility for them to receive and use your work if they won't agree to open source licensing. In that case, you can put any terms you choose into the license. MySQL refers to this situation as their “commercial license,” but as I explained above the determining factor for whether or not the commercial license applies is not whether or not the use is commercial, but whether the recipient is willing to abide by the terms of an open source license.

I hope you've found this helpful.

Sincerely,

Mark B. Rosenthal

P.S. - I just noticed that the voice in <http://mirrors.creativecommons.org/getcreative/clicktoplay.html> sounds an awful lot like yours. Is it you?