903 Recent Developments in Intellectual Property Law Open Source

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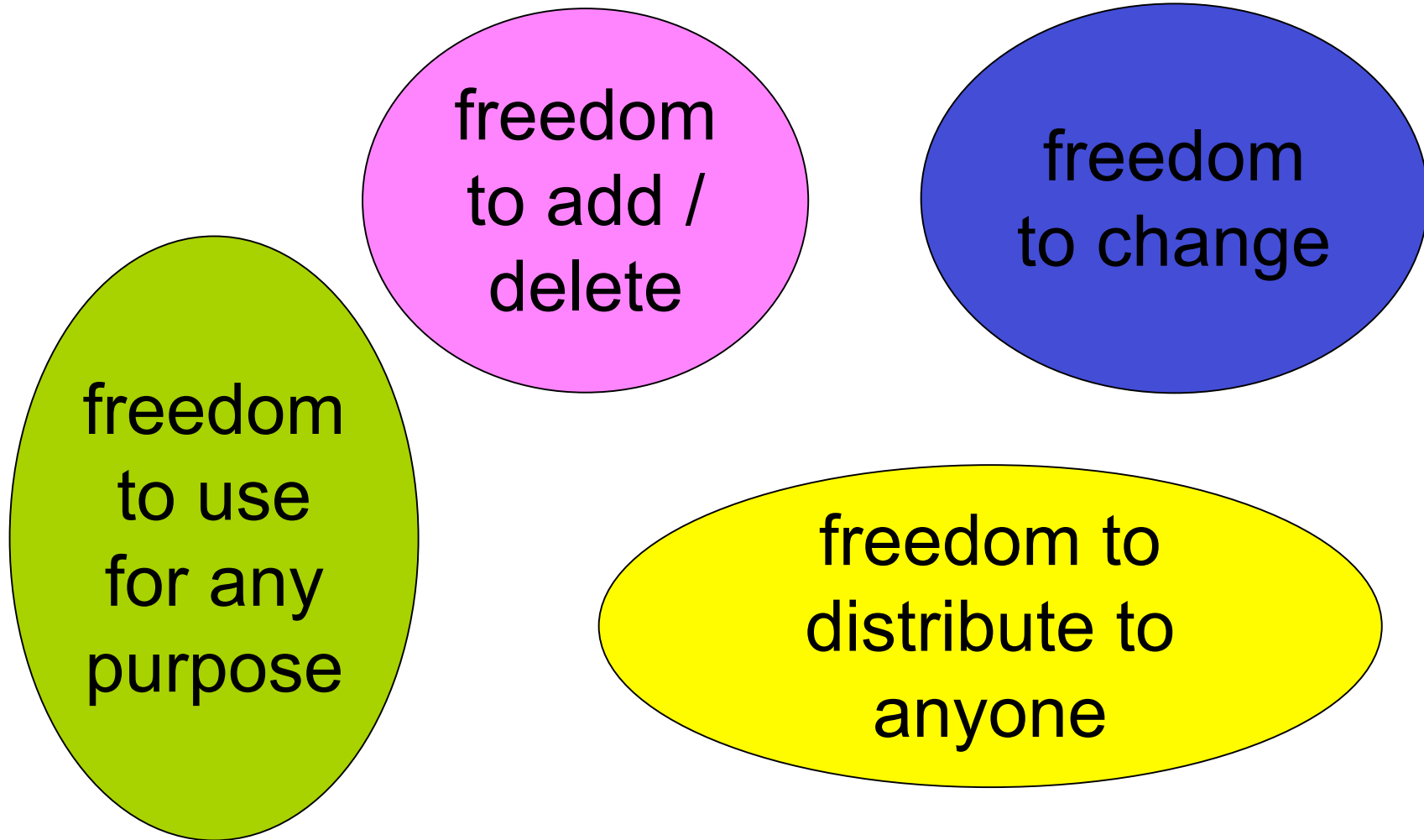## Senior Legal Counsel, GE Healthcare

open source software and copyright

- open source software is a **copyright work**
- the **copyright owner** is the author of the code
- if you want to **copy** the code, you need to get the **copyright owner's permission**
- the copyright owner gives you permission in a **licence**
  - **ITS THE CONDITIONS IN THE LICENCE**
  - **THE CONDITIONS IN THE LICENCE IS WHAT MAKES IT OPEN SOURCE**

conditions in the licence

- the author of the code decides to impose "open source" conditions

- anyone who copies the code has to comply with the "open source" conditions

- if you don't comply with the "open source" conditions, you don't have the owner's permission and you are breaching copyright

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freedom to play

freedom to add / delete

freedom to change

freedom to use for any purpose

freedom to distribute to anyone

who are we playing with?

will community exist for whole product lifecyle?

BU

licence conditions

"as is" no indemnities no warranties

any distribution has to include source code

any distribution has to be on same conditions

royalty free

licence conditions

"as is" no indemnities no warranties

conditions also cover any changes *you* make and derivatives

why is this an issue - changes and derivatives

- if you change code / write code based on other code
- you own and control the new code / changes to code
- *subject to* the rights in the original code
- you can decide how code used – can impose conditions on use

- *unless the underlying code is open source*
- it doesn't matter who owns the new code / changes to code
- the owner can't choose its own conditions on use of code
- all code based on open source code becomes open source code and subject to open source conditions

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its the flesh eating zombies in "Night of the Living Dead"

if they bite you, you become a flesh-eating zombie!

	copyright notce	copy of licence in source code	copy of licence in materials	royalty free	include source code	covers modifications	covers combinations of OSS code and other code in one program
BSD	X	X	X				
MIT	X	X		X			
Apache	X	X	X	X			
Mozilla	X	X		X	X	X	
GPL	X	X			X	X	X

manage open source risk

- *compliance* – comply with licence

AND

- *compatibility* – OSS and your code / product

- OSS planning part of design
NOT afterthought / add-in