

How open is open?
Microsoft's Shared Source Initiative as an Alternative to Open Source Software

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Abstract

Over the past few years, Microsoft has promoted a project called "Shared Source Initiative" which allows access to source code to certain customers (e.g. research institutions and independent software vendors) on a restricted basis. Given that availability of source code is a prime characteristic of Open Source Software it could therefore be argued that Microsoft has embraced the Open Source Software philosophy. This paper analyses Microsoft's Shared Source Initiative and compares it with the prerequisites/characteristics of Open Source Software (i.e. its essential freedoms).

If Open Source Software was only defined by the accessibility of source code, the availability of source code would equal open source, and hence, it would appear that Microsoft's Shared Source Initiative is more than just another attempt to appease consumers and/or critics in terms of software transparency. In fact, in view of such a limited definition, Microsoft could be considered an Open Source Software developer itself. However, while such a definition of Open Source Software is accurately inclusive (i.e. all Open Source Software has freely accessible source code), it is not accurately exclusive as not all products with available source code are Open Source Software.

This paper addresses some of the legal and practical implications that Microsoft's project might have for software developers and/or consumers. A special emphasis is placed on the question of intellectual property rights and related litigation as it has been argued that even viewing any of the Microsoft code might constitute grounds for a later claim of copyright litigation if similar code appears in any Open Source Software product (Feller/Fitzgerald 2002).

Though Microsoft branded their Shared Source Initiative as a "move to the middle" (Microsoft 2004), this paper submits that this project is more than just a voluntary move on Microsoft's behalf but is, in fact, an attempt to regain previously lost grounds in terms of market dominance. Moreover, it is maintained that Microsoft's Shared Source Initiative should not be mistaken for a move in the direction of Open Source Software, as there is more to the question of openness than just the issue of availability of source code.