



OSET  
FOUNDATION  
PUBLIC LICENSE

## Frequently Asked Questions v2.1

Below are questions asked frequently of our Legal Team with regard to our OSET Foundation Public License (“OPL”). We hope this FAQ, in combination with our Rational White Paper, clarifies these inquiries.

### 1. Is your license truly an open source software license?

**Yes.** The OSET License (“OPL”) is an open source software license, without a doubt amongst trained, experienced open source licensing lawyers. Here is why. The license meets the Open Source Definition promulgated by the Open Source Initiative (<http://opensource.org/osd-annotated>). The definition has 10 elements, as described below.

**A. Free Redistribution.**

The license allows royalty-free redistribution. The OPL does this. See [Section 2.1](#) of the OPL.

**B. Source Code.**

The license allows redistribution of source code. The OPL does this. See [Section 2.1](#) of the OPL.

**C. Derived Works.**

The license allows modifications and derived works to be created and redistributed. The OPL does this. See [Section 2.1](#) of the OPL.

**D. Integrity of The Author's Source Code.**

The notice requirements for the license are customary for open source licenses. The OPL notices are customary and comprehensive. See generally [Section 3](#) and in particular [Section 3.4](#) of the OPL.

**E. No Discrimination Against Persons or Groups.**

While our license is designed to help elections procurement agencies meet their needs, it can be used by anyone. There is nothing in the license requiring it to be used by elections officials or any other class of persons. See generally the text of the OPL.

**F. No Discrimination Against Fields of Endeavor.**

While our software is designed to help with elections administration, it could theoretically be used for any purpose. There is nothing in the license requiring source code under this license to be used for elections or voting. See generally the text of the OPL.

#### H. **Distribution of License.**

“The rights attached to the program must apply to all to whom the program is redistributed without the need for execution of an additional license by those parties.” While we do expect that our license will be used in parallel with other agreements, such as contracts of other systems integrators hired by elections jurisdictions to build and deploy elections and voting systems, the OPL does not require any other contract to be entered into.

#### I. **License Must Not Be Specific to a Product.**

While our software is designed to help with elections systems, it can be used for any purpose. There is nothing in the OPL requiring it to be used in elections systems.

#### J. **License Must Not Restrict Other Software.**

Our license is a copyleft-style license, requiring modifications to be delivered under the same license terms. However, the OSI specifically says this approach, similar to GPL, MPL, and others, does NOT violate the definition.

#### K. **License Must Be Technology-Neutral.**

While our open source software technology is designed to help with elections and voting systems, it can be used in any development or deployment environment. There is nothing in the OPL requiring it to be used on a particular platform.

## 2. You say your license is based on the Mozilla Public License, yet yours contains several provisions not found in the MPL. Why?

The OSET Public License (“OPL”) is indeed based on MPL2 (*Mozilla Public License version 2*), which is an approved open source license. There are some required differences to meet certain Stakeholder procurement regulatory requirements summarized below, which do not change that fact in any way.

#### A. **Governing law and venue provisions.**

Government procurement often requires that a particular law selection apply. See [Sections 9.3 and 9.4](#) of the OPL. (*The APSL<sup>1</sup>, another open source license approved by OSI, also conditions such provisions.*)

#### B. **Government Rights.**

This is a “what you see is what you get” provision that prevents regulations from trumping the license. Absent this provision, the terms of the license might not apply at all, because under the law, government procurement rules can trump private agreements or license terms. See [Section 9.1 and 9.4](#) of the OPL (*The APSL, another open source license approved by OSI, also conditions such provisions.*)

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<sup>1</sup> The APSL or The Apple Public Source License is the open source and free software license under which Apple's Darwin operating system was released. A free software and open source license was voluntarily adopted to further involve the community from which much of Darwin originated. You can learn more here: [en.wikipedia.org/wiki/Apple\\_Public\\_Source\\_License](http://en.wikipedia.org/wiki/Apple_Public_Source_License) and the license itself is available here: [www.opensource.apple.com/license/apsl/](http://www.opensource.apple.com/license/apsl/)

**D. Sovereign Immunity.**

Contracting with governments brings up a special issue that doesn't apply to anyone else: normally, if you grant a license to government, you may not be able to sue for a violation because governments can be immune from legal claims. We ask recipients to waive this restriction, so there is a remedy if the recipient does not abide by the terms of the license. See [Section 9.2](#) of the OPL.

**E. Ability to adjust terms downstream.**

This is a choice for our downstream users. In this respect, our license is similar to any permissive license like Apache, BSD or MIT. For instance, some procurement regulations require the government to have broader rights than other licensees, or that certain restrictions be placed on the use of the software, such as for security purposes. We allow terms to be added as required by law. See [Section 4](#) of the OPL.

**F. Source code delivery requirements.**

In our latest (and hopefully final) version of the license, we have expanded these requirements in response to IRS concerns in negotiating our tax-exempt status, and clarified that the licensor reserves the right for injunctive relief. These terms set a more specific level of compliance than other copyleft licenses, but fundamentally require source code to be made public, as does any copyleft license. See [Section 5.3](#) of the OPL.

**3. How does the OPL compare to the GPL and shouldn't they be at least compatible?**

**Yes, and it is.** The OSET Public License (OPL) is completely compatible with GPL3. This is handled in our license the same way it is handled in MPL2, which is specifically recognized as “indirectly” compatible by the Free Software Foundation ([www.gnu.org/licenses/license-list.html](http://www.gnu.org/licenses/license-list.html)). So, if you prefer using our code under GPL3, you are welcome to do so, unless there is an opt-out for the particular code base applied by the licensor. See [Section 3.3](#) of the OPL. This means that for government entities (States, counties, or other elections jurisdictions) wishing to adopt, adapt, and deploy TrustTheVote Project open source elections software technology and which have regular procurement regulations controlling how they acquire information technology, the OPL will serve their needs. If not, or if the licensee is not a government entity bound by procurement regulations, then they may opt to take our source code under GPL. This unique feature to our license has been there from early on to provide the most flexible adoption possible and why we are confident that it is completely compatible with the GPL, which on its face cannot meet certain government procurement regulatory requirements as we learned in adoption of our work in the Commonwealth of VA and as has been evaluated in several other jurisdictions around the country.

#### 4. Why yet another open source license?

Some people believe no one should have the right to create new licenses. We don't agree, in part because our Stakeholders<sup>2</sup> have told us they cannot use code under GPL or any other existing open source license, without adding restrictions. However, GPL prohibits adding restrictions, and no other copyleft license contains the provisions our stakeholders tell us they need. The alternative would be to use a permissive license like Apache 2.0, but we want to keep our software as open as possible, and Apache will not accomplish that objective.

Some suggest that this is unnecessary as there is plenty of precedent for the use of GPL licensed open source in all levels of government. We agree with that statement with one significant clarification. In the vast majority of those cases, open source software is being acquired without any financial commitment on the part of the acquiring agency. Voting and election administration systems are large financial commitments of taxpayer dollars. Where open software is an integral part of the overall system being acquired and contracts for the purchase are involved, the licensing for all of the underlying technology—including open source—becomes subject of review, negotiation, and agreement. Therein lies the requirement for the OPL.

So, we have prepared our license in a way that meets our Stakeholders' needs without violating the open source definition. If we don't do that, we will lose in the marketplace to proprietary vendors. We understand that there are many in the open source community who believe that GPL is the only license anyone should use. Respectfully, not everyone holds this view, and it is not a realistic expectation to use GPL in some markets. Those who prefer to change the laws to always allow government procurement to always use GPL can (*and probably should*) do so—legal reform efforts are part of the democratic process.

We carefully looked at the use of our precious philanthropic dollars to help rewrite uniform procurement regulations to enable GPL to serve all needs regardless of

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<sup>2</sup> A “Stakeholder” as the term and phrase apply here, refers to State, county, and local election administrators, executives, officials and registrars. “Stakeholder Community” refers to the autonomous collective we have created of Stakeholders plus election experts from academia, good government groups, and the Federal government. The Community, as of June 2015, is a mail list comprised of 200 such individuals from 26 States, comprising just over 62% of the American Electorate—a sizeable representation. This group was created in order to drive requirements and specifications through an IETF-like RFC process for the TrustTheVote Project Open Source Election Technology Framework (see: [bit.ly/OSETosetf](http://bit.ly/OSETosetf)). (*Our thanks to Steve Crocker, arguably the “father of” and steward of the IETF RFC process for encouraging porting of this model for our purposes here. For those interested and less familiar, search for “Internet Engineering Task Force” or “IETF RFC” on the Web.*) These individuals agreed to participate on the condition of the list being unpublished, and with optional anonymity due to political and public participation process issues. Some of these individuals are open and notorious about their participation; the majority less so. We believe that will change over time, but it has been born of political necessity until such time as there is a broad understanding that our work is non-partisan and benefits “*all sides of the aisle.*” Importantly, there is no intent of secrecy, or more importantly, no lack of transparency. And it is these Stakeholders' procurement agents, government attorneys, and contract administrators who have raised the issue of licensing terms and conditions—regardless of consideration (*i.e., money paid to acquire right to use*). We are happy to forward inquiries to Stakeholders and make them available (*as they are willing*) to discuss their views of this Project and any aspect of it, including this rather important and nuanced issue of licensing.

procurement guidelines.

The trouble is, as a 501(c)(3) tax-exempt organization we cannot engage in this kind of lobbying for legislative reforms directly. And the investment estimated to do so would have been multiples of what we spent in simply developing a new flexible license for our Stakeholders who require one. So, legislative reform at that scale will have to be someone else's endeavor. In the meantime, though, we need to build open voting systems that can achieve the VAST mandate of trustworthy elections: **V**erifiable, **A**ccurate, **S**ecure, and **T**ransparent to support the democratic process. And we place this objective above a philosophical goal to exclude people from creating and using other licenses.

#### 5. Don't your governing law and venue provisions limit potential contributions by parties in other countries?

These days it is not common to include governing law and venue provisions in open source licenses. If there is not a governing law provision, however, that does not save a developer from having a particular governing law thrust upon him or her. In the absence of a law selection provision, a court enforcing a license has to pick some body of law to use, but the choice of law may be unpredictable. U.S. law will usually be applied in a U.S. dispute. *(That's an oversimplification, of course. The rules for choice of law can be complex, and in the U.S. we have overlays of state and federal law.)* Now, a developer might want to choose the venue for enforcement (*via and IP infringement action*), and might therefore influence the choice of law that is applied to an enforcement action. We take the point that most open source licenses don't proscribe that choice. We don't have a solution for that, but we know it has been successfully addressed by other OSD compliant licenses, such as the Eclipse Public License and CECILL License.

#### 6. The provision addressing the ability to adjust downstream terms seems problematic in that it might involve a grant of rights, which upstream code contributors did not intend, or agree, to grant, no?

The provision addressing the ability to adjust downstream terms says one can "*place additional conditions on the right granted*" but that would not include additional grants of rights or waiver of conditions. That distinction may sound like a legal technicality, but in open source licensing there is an important difference between license conditions—which narrow a grant of rights—and granting additional rights or removing conditions. For example, in most copyleft licenses, one cannot place additional conditions on the exercise of the license at all, or remove any condition. Our variation is actually very narrow -- *only as required by law*. We take the point that States can pass crazy legislation. But if a law reads that a State cannot use the software for elections except with restriction X, and the license (*such as GPL*) says you can't impose restriction X, then the state cannot use the software at all, and we are trying to avoid this result.

If you want more information, take a look at our rationale document here: [www.usetfoundation.org/s/OSETPublicLicenseRationale\\_v22.pdf](http://www.usetfoundation.org/s/OSETPublicLicenseRationale_v22.pdf) and the license itself here: [www.usetfoundation.org/s/OSETPublicLicense\\_v2.pdf](http://www.usetfoundation.org/s/OSETPublicLicense_v2.pdf)

From time-to-time, this document will be updated and extended as new questions arise that we believe are of value in having a recorded answer here to refer others. We appreciate your continued interest.

Our intent is to continually ensure that we make the work of the OSET Foundation as accessible and participatory as possible, guided by the criticality of the software and its application to an imperative process of government administration.