

OPEN SOURCE SOFTWARE

Policy Number 603GS

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Scope

This Policy on Open Source Software applies to faculty, staff, predoctoral researchers, summer scholars and applicants (“Covered Individuals”) of The Graduate School of the Stowers Institute for Medical Research (“The School”).

Purpose

The School is included in the Stowers Group of Companies (“SGC”) Organizations and has adopted the following policy as its own.

In performing duties at the SGC, Covered Individuals may encounter opportunities to use, modify, create, or distribute Open Source Software. Use of Open Source Software developed by third parties offers benefits to the SGC, including: the ability to modify, improve, customize, and incorporate code from such software; quality that is often superior or comparable to that of software available from commercial providers; and significant cost savings over either purchased licenses for comparable software from commercial providers or original software produced within the SGC. In distributing as Open Source Software either its own software or SGC-developed improvements to third-party software, the SGC will benefit from peer review and error identification, correction, and refinement provided by a large and broad-based community of developers. Conversely, Open Source Software may also present significant risks and disadvantages to the SGC, including impairment of the SGC’s ability to commercialize SGC Software that incorporates or is derived from Open Source Software or that has been made available by the SGC as Open Source Software. In addition, as with any software (commercial or otherwise) that the SGC may use or distribute, the use or distribution of Open Source Software may unknowingly expose the SGC to risk of liability for infringement of intellectual property rights or may violate the terms of the SGC’s licenses for other software. To minimize this risk, the SGC and Covered Individuals should ensure that the SGC’s software licenses are Open Source-compatible whenever possible.

To manage and balance these benefits and risks, this policy establishes procedures and administrative criteria to be considered with respect to Open Source Software received from third parties and the distribution or release to third parties of SGC Software under an Open Source license.

This policy applies only to Open Source Software and not to software distributed or obtained under any other form of software license.

Policy

Definitions

- “SGC Software” – Any item of software, or, if applicable, the distinguishable portion of the code of an item of software (such as a “patch”) that is owned by the SGC.
- “Incoming OSS” – Open Source Software that is owned by a third party or parties.
- “Intellectual Property Policy” – The SGC’s Policy on Intellectual and Other Property, Confidential Information, and Nonsolicitation (Policy 201L).
- “Major Outgoing OSS” – Outgoing OSS that contains particularly sophisticated algorithms and is composed of more than 200 lines of substantial algorithmic code.
- “Minor Outgoing OSS” – Outgoing OSS that lacks particularly sophisticated algorithms or is composed of not more than 200 lines of substantial algorithmic code.
- “Open Source Software” or “OSS” – Software that, pursuant to the terms of the license through which it is made available (1) is freely distributed, (2) includes the source code, (3) allows use and modification or incorporation of the source code into other software by the user/licensee, (4) allows modified versions to be redistributed by the user/licensee, and (5) does not require the exclusion of other software or interfere with the operation of other software.
- “OSS Administrator” – The Head of Information Management
- “Outgoing OSS” – SGC Software made available or proposed to be made available by the SGC to third parties as Open Source Software.
- “Software” – Computer programs in the broadest sense, including user manuals and other explanatory materials which accompany computer programs and computerized databases, microcode, operating systems, language compilers, and application programs in whatever form expressed (machine or assembly language, source or object code) or embodied (such as chip architecture, ROM, disk or tape storage or program listings).

Incoming OSS

The SGC generally supports and encourages the use of Incoming OSS by Covered Individuals, provided that appropriate consideration is given by Covered Individuals to ensure that such use is in the SGC’s best interests. Covered Individuals who are considering obtaining and using any item of Incoming OSS will bear the initial responsibility for ensuring that the license terms for such Incoming OSS are not unduly disadvantageous or burdensome to the SGC. Covered Individuals should generally consider the following criteria, among others, to determine if obtaining or using an item of Incoming OSS is in the best interests of the SGC:

- The terms and conditions of the license, including the nature and magnitude of potentially adverse Incoming OSS license provisions described below;
- The importance of the subject software to the SGC’s scientific research or software development activities;
- The intended use of the Incoming OSS and the possibility that the use of the software could adversely impact the potential commercial value to the SGC of other existing or future SGC Software;

- The Covered Individual's future ability to "strip out" the Incoming OSS code from the SGC Software if it is later determined that the inclusion of such code substantially impairs the commercial value that the SGC Software might otherwise have;
- The availability of alternative software from other third party sources and the licensing terms and conditions (including the cost to the SGC) under which such alternative software may be obtained;
- The SGC's ability to internally develop alternative software, as well as the estimated cost and time commitment necessary for such development; and
- The monetary cost to the SGC, if any, of the Incoming OSS (the cost for Open Source Software should be minimal).

Covered Individuals should recognize that the various types of licenses that purport to be "Open Source" licenses contain significant variances. Covered Individuals must, therefore, carefully review each proposed Open Source license to determine whether it is in the SGC's best interests to obtain and use such item of Incoming OSS. Without limiting the above-listed criteria, Covered Individuals should consider, among other things, the possible impact of any of the following common but potentially detrimental provisions that may exist in an Incoming OSS license:

- Any provision that would require the Covered Person or the SGC to make any SGC-developed modifications or derivative works from such Incoming OSS available under license terms the same as or similar to those of such Incoming OSS (such a provision exists in the GNU General Public License) or which would otherwise preclude the SGC from taking derivative works "private" (note that provisions of this type may in some cases be beneficial to the SGC rather than adverse);
- Any provision that establishes rights or obligations with respect to such Incoming OSS that may be incompatible with existing licenses to the SGC or may interact with the proposed license for the Incoming OSS. (Please note that the SGC may license software under non-Open Source licenses that prohibit any incorporation of such software with or into an item of Open Source Software or grant an exclusive license to all derivative works to the licensor.); and
- Any provision that would require the SGC to make representations or warranties of any type or that could require the Covered Individual or the SGC to agree to indemnify any individual.

The standard, unmodified forms of the Open Source licenses listed in Exhibit A are generally acceptable to the SGC for Incoming OSS, provided that Covered Individuals determine in each case whether the expected use of an item of Incoming OSS is in fact in the SGC's best interests.

If the Covered Individual considers the license terms and the SGC's expected use of an item of Incoming OSS and determines that obtaining and using the item of Incoming OSS is in the SGC's best interests, the Covered Individual may proceed to license and use such Incoming OSS. Covered Individuals should consult with the OSS Administrator regarding any questions concerning the provisions of a proposed Incoming OSS license and/or whether obtaining or using

a particular item of Incoming OSS is in the SGC's best interests. Covered Individuals obtaining any item of Incoming OSS or using or developing any software incorporating or derived from Incoming OSS are responsible for ensuring that all such activities are in compliance with the terms of the applicable license and shall take reasonable steps to ensure that other Covered Individuals who may use such software are aware of the license terms applicable to such software. Covered Individuals shall maintain a logbook (which may be maintained electronically) of all Incoming OSS obtained and the Covered Individual's use and distribution thereof and shall provide the OSS Administrator with such logbook upon request.

When an item of Incoming OSS will be linked, incorporated into, or used in connection with SGC Software, Covered Individuals should use the Incoming OSS, to the extent reasonably practicable, in such a way as to maintain a clear segregation between the Incoming OSS and the SGC Software. This may be done by splitting that portion of the SGC Software that interacts with the Incoming OSS into a stand-alone, discrete module separate from the SGC Software as a whole. In the case of some licenses for Incoming OSS, this segregation of the SGC Software may preclude the SGC Software from falling under the license of the Incoming OSS.

Outgoing OSS

Any distribution or release of SGC Software as Outgoing OSS should be in the best interests of the SGC. Specifically, without imposing an undue burden on Covered Individuals, the distribution and release of Outgoing OSS is to be carefully managed to ensure that the benefits that flow to the SGC from such distribution or release are adequate consideration for the value of the rights being so transferred. To this end, the SGC has adopted a two-tiered approach to the distribution and release of Outgoing OSS. The SGC allow Covered Individuals significant independence and discretion with respect to the distribution and release of Minor Outgoing OSS. Conversely, the SGC closely regulates the distribution and release of Major Outgoing OSS.

General Requirements for All Outgoing OSS

No Covered Individual may distribute or release any item of Outgoing OSS unless such Covered Individual is the primary developer of such software, has received the express consent to such distribution or release from all other Covered Individuals or other individuals who have materially contributed to the development of such Outgoing OSS, and has, after reasonable diligence, confirmed that such software does not infringe upon the intellectual property rights of any individual or violate the terms of any applicable license to the SGC. The Covered Individual may elect to distribute or release Outgoing OSS under either the GNU General Public License (a "copyleft" license) or the BSD License (a less restrictive license). See Exhibit B for the text of the approved license provisions to be used for each of these license types. Use of another form of OSS license for Outgoing OSS is permitted upon prior approval of the OSS Administrator.

Note that each item of Outgoing OSS may carry the name of the Covered Individual(s) credited as the developer/author(s) of such software (determined in accordance with the Intellectual Property Policy) at the discretion of the primary developer. In addition, each item must carry any other marks or legends as may be required to meet the SGC's contractual obligations and

administrative needs, including, as applicable, any information required under research contracts or grants.

Minor Outgoing OSS

Any Covered Individual who is considering distributing or releasing any Minor Outgoing OSS may do so without any prior review or consent from the OSS Administrator or other SGC management, provided that the Covered Individual completes Form F603Ra and delivers it to the OSS Administrator at or prior to the time of the initial distribution or release and specifically confirms that each of the general requirements for Outgoing OSS set forth above has been satisfied. Covered Individuals must carefully consider the potential commercial value of all items of SGC Software proposed to be distributed or released as Outgoing OSS, regardless of code line length, and should use their best judgment in determining whether distribution and release of such software as Outgoing OSS is in the best interests of the SGC. Covered Individuals are encouraged to consult with the OSS Administrator regarding any questions related to any proposed distribution or release of Minor Outgoing OSS.

Major Outgoing OSS

Any Covered Individual who is considering distributing or releasing any Major Outgoing OSS shall complete Form F603Rb and submit it to the OSS Administrator. The Covered Individual shall refrain from taking any action to distribute or release such Major Outgoing OSS unless and until expressly approved by the OSS Administrator.

The OSS Administrator will promptly review each Outgoing OSS request in consultation, as necessary, with other members of SGC management, legal counsel, and/or the Covered Individual submitting the request. In addition, when software results from sponsored research or grants, the OSS Administrator will consult with the SGC's Director of Finance regarding contractual obligations and regulations affecting ownership, disposition of various rights and restrictions on the distribution and use of the software, and any associated income. The OSS Administrator will notify the Covered Individual whether the Outgoing OSS request is approved as requested, provisionally approved contingent upon specific changes or limitations, or rejected. The OSS Administrator shall file a record of each approved OSS request with the Senior Director of Research Operations.

The OSS Administrator will generally consider the following criteria, among others, to determine whether or not to approve an Outgoing OSS request:

- The usefulness of the software to the research community at large and the potential benefits to the research community resulting from collaborative Open Source development;
- The potential commercial value of the Outgoing OSS to the SGC and the likely diminution or enhancement of such value resulting from its release in Open Source form;
- The existence of any potential commercial applications beyond the immediate application;
- The existence and nature (i.e., for-profit or not-for-profit) of potential licensees for the Outgoing OSS;

- The expected useful life of the software;
- The ease with which the software may be reverse-engineered if it were to be commercialized and not made available as Open Source software;
- The goodwill in the research community that may accrue to the SGC through the release of the Outgoing OSS and the likelihood of any resulting increased external funding to the SGC;
- The likelihood that the SGC and the public will benefit from improvements to the Outgoing OSS made by other users;
- The terms and conditions of the proposed license for the software (see Exhibit B); and
- The risk to the SGC of possible legal claims that the Outgoing OSS violates a third-party copyright.

Limited Outgoing OSS Licenses

In evaluating an Outgoing OSS request, the OSS Administrator may in some cases determine that it is in the SGC's best interests to divide the distribution or release of the software to allow Open Source licensing solely for non-commercial uses while requiring any commercial use of the software to be subject to a separate, traditional commercial software license. In such event, the OSS Administrator will designate an appropriate and limited Open Source license for use in the distribution and release of such software solely for non-commercial use.

Outgoing OSS Project Approvals

Covered Individuals may from time to time be engaged in ongoing collaborative projects in which project participants, including the SGC, may anticipate making ongoing contributions of software in Open Source form. When participating in such a project, to the extent item-by-item approval is deemed impracticable, Covered Individuals may submit an Outgoing OSS request for approval of the ongoing distribution and release of multiple items of Outgoing OSS (which may include SGC Software not yet developed or identifiable) in accordance with the project arrangements. For any such Outgoing OSS request, the OSS Administrator shall, to the extent possible, identify and circumscribe those items or types of SGC Software that are approved for such distribution and release. Covered Individuals participating in any such project and approving the ongoing distribution and release of Outgoing OSS shall notify the OSS Administrator at or prior to the initial distribution or release by the Covered Individual of each item of Major Outgoing OSS pursuant to such project approval.

Exhibit A
Approved OSS License Forms

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Artistic License
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Common Public License
Expat / MIT License
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GNU Library or "Lesser" Public License (LGPL)
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Exhibit B

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[Written by [AUTHOR(S)], [NAME OF SGC ORGANIZATION].] Please submit all inquiries regarding this software to [TITLE OF CONTACT PERSON], Stowers Group of Companies, 1000 East 50th Street, Kansas City, MO 64110, [E-MAIL ADDRESS].

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Written by [AUTHOR(S)], [NAME OF SGC ORGANIZATION]. Please submit all inquiries regarding this software to [TITLE OF CONTACT PERSON], Stowers Group of Companies, 1000 East 50th Street, Kansas City, MO 64110, [E-MAIL ADDRESS].

This policy was approved by the GSSIMR Board of Directors on September 5, 2018.
This policy was last updated by the GSSIMR Board of Directors on November 09, 2020.
This policy will be reviewed by the GSSIMR Board of Directors in 2022.