

FREQUENTLY ASKED QUESTIONS

Are these Frequently Asked Questions legally binding upon Blackboard?

Yes. These FAQ's are incorporated into the pledge and are legally binding.

How do I know if my software qualifies as Open Source Software?

For purposes of this pledge, Open Source Software is any computer software program whose source code is published and available for inspection and use by anyone, and is made available under a license agreement that permits recipients to copy, modify and distribute the program's source code without payments of fees or royalties.

What is a Home-Grown System?

For purposes of this pledge, a Home-Grown System is any Course Management System that is wholly-developed by a school, museum or library and solely used by a school, museum or library anywhere in the world.

What is a Course Management System?

For purposes of this pledge, a Course Management System is any web-based application for managing and/or providing courses online to individuals.

What does "Bundled" mean?

For purposes of this pledge, Open Source Software will be considered to be Bundled with proprietary software if any of the following are true:

1. the Open Source Software and proprietary software are licensed or provided via a single agreement;
2. the Open Source Software and proprietary software are sold together;
3. the Open Source Software and proprietary software are provided together via a media (e.g., on the same CD(s));
4. the proprietary software cannot operate without the Open Source Software; or
5. the Open Source Software and proprietary software can both be downloaded from the same location.

Can you give me a few examples of Bundled software?

If you license a product for a fee incorporating the Moodle Course Management System and other proprietary software, the Moodle application would be considered to be Bundled with the proprietary software.

If you sell proprietary software that will not operate without the Sakai Course Management System, the Sakai application would be considered to be Bundled with the proprietary software.

If you sell a CD to a user that has both proprietary software and an Open Source Software Course Management System on it, the Open Source Software Course Management System would be considered to be Bundled with the proprietary software.

Can you give me a few examples of when Open Source Software used in conjunction with proprietary software would not be Bundled?

If a school implements Sakai and integrates it with PeopleSoft, this pledge would apply.

If a school creates Open Source Software and adds it to their proprietary portal system, this pledge would apply.

If Oracle publishes its own "flavor" of Moodle as Open Source Software which is fully integratable with proprietary products that are not reliant on Moodle and provides such software separate from its proprietary products, this pledge would apply.

My institution uses an Open Source Software Course Management System that also includes certain free proprietary software elements. Am I covered by this pledge?

Blackboard recognizes that Open Source Software may at times incorporate certain proprietary elements to enhance functionality within the software. Therefore, in addition to the pledge above, Blackboard hereby irrevocably agrees not to assert the listed U.S. patents, as well as all counterparts of these patents issued in other countries, against the following open source initiatives: Sakai, Moodle, ATutor, Bodington, Elgg, Lon-Capa, Claroline, Connexions, Dokeos, Learnloop, Interact, Segue, Whiteboard. Additionally, Blackboard hereby irrevocably agrees not to assert the listed U.S. patents, as well as all counterparts of these patents issued in other countries against any school, library or museum for the use of such Open Source Software Course Management System to the extent that it was acquired from such open source initiative.

Does this pledge apply to Course Management Systems that are developed in the future?

Yes. This pledge applies to all Course Management Systems regardless of the date of development, use or sale.

My institution uses an Open Source Software Course Management System (e.g., Sakai, Moodle), does this pledge apply to us?

Yes. To promote the use and development of Open Source Software, Blackboard agrees that it will not assert the listed patents against any institution using or providing Open Source Software.

My institution uses a Course Management System which is not Open Source Software (e.g., D2L). Does this pledge apply to us?

Suing an institution to enforce our patent would not be in Blackboard's interest as it would generate intense dissatisfaction among Blackboard's clients and potential clients. Blackboard has never sued a school, museum, or library and depends on the goodwill of the academic community for our survival. Having said this, Blackboard cannot promise never to sue a school, museum or library to enforce its patent without placing at risk critical rights and protections afforded under this patent. Specifically, nothing in this pledge or FAQ should be read as implicitly or expressly granting a license to practice any patented invention, and Blackboard reserves the right to sue any entity not otherwise covered by this pledge for inducing or contributing to such school's infringement.

My institution created its own Course Management System that it uses internally but it is not Open Source Software, does this pledge apply to us?

Yes. Blackboard supports the internal development of Home-Grown Systems and agrees that it will not assert the listed patents against them.

What if I let other departments within my institution use our Home-Grown System?

That's ok. The pledge still applies to you.

What if I license our Home-Grown System to other institutions?

So long as your Home-Grown System is licensed to other institutions as Open Source Software and is not Bundled with proprietary software, this pledge would still apply.

What if I give our Home-Grown System to other institutions without charge?

If you give your Home-Grown System to other institutions without charge or restrictions, the pledge would still apply.

My company provides Course Management Systems under a proprietary license. Does this pledge apply to us?

No. If a company is licensing its Course Management System other than as Open Source Software, this pledge would not apply.

My school would like to combine Sakai or Moodle with DB2 and Websphere on IBM hardware, and would like IBM to install everything on its hardware before shipping it. Is this covered by your pledge?

No. If the Open Source Software is Bundled by IBM with its proprietary software, this pledge would not apply. However, IBM's sale of its hardware with the same Open Source Software pre-installed would be covered by the pledge, as long as it did not require the purchase of its hardware to obtain the Open Source Software. IBM's sale of its hardware with proprietary software alone would also be covered by this pledge, as long as your school downloads and installs the Open Source Software itself (or with the help of a third party, including IBM).

My company would like to provide hosting services for an Open Source Software or Home-Grown System Course Management System for a fee. Does this pledge apply to us?

Yes. Blackboard understands that some institutions require such hosting services to successfully utilize Open Source Software and Home-Grown Systems. Accordingly, this is covered by our pledge.

My company would like to host Open Source Software or Home-Grown System Course Management Systems along with proprietary software. Is this covered by the pledge?

Yes, so long as the proprietary software is not Bundled (as defined above) with the Open Source Software or Home-Grown System.

My company would like to provide fee-based support services for Open Source Software or a Home-Grown System. Does this pledge apply to us?

Yes. Blackboard understands that many institutions require support services to successfully utilize and integrate Open Source Software and Home-Grown Systems. Accordingly, this is covered by our pledge.

My company would like to provide maintenance services for Open Source Software or a Home-Grown System for a fee. Does this pledge apply to us?

Yes. Blackboard understands that Course Management Systems require ongoing maintenance and accordingly, this is covered by our pledge.

My company would like to provide fee-based customization services for Open Source Software or a Home-Grown System. Does this pledge apply to us?

Yes. Blackboard understands that no one system can meet the needs of all users and that customizations are necessary to realizing the full potential of many Course Management Systems. Accordingly, customization services are covered by this pledge so long as your company is only charging for the customization services alone.

My company would like to customize an Open Source Software or Home-Grown System Course Management System and then license the customized software to others. Does this pledge apply to us?

Yes. So long as you license the customized software under an open source license. If you license the customized software under a proprietary license (with or without fees), this pledge would not apply. If you require the purchase of services or support as a condition to obtaining the customized software, then it would not be deemed Open Source Software for the purposes of this pledge and, therefore, this pledge would not apply.

My school would like to hire Oracle to integrate Sakai or Moodle with our Oracle ERP system. Is this covered by your pledge?

Yes. Your school can combine Open Source Software with proprietary software using a third party service provider as long as the otherwise infringing Open Source Software is not Bundled with the proprietary software.

My company would like to incorporate Open Source Software into our proprietary software (e.g., include the Sakai Course Management System as part of a commercially-licensed software package). We won't be charging for the portion that contains the Open Source Software but will be charging for our proprietary portion. Is my company covered by this pledge?

No. To the extent that any proprietary software is Bundled with the Open Source Software, this pledge would not apply. However, if your customers wish to supplement or enhance your proprietary

product with Open Source Software which is not Bundled by you, that would be covered. Blackboard believes this pledge provides a strong incentive for developers to continue building extensions to proprietary solutions as well as to enhance standards such as those promulgated by IMS, while allowing schools to accomplish all of its information technology goals.

If a product is Open Source Software, why does it matter if it is "Bundled" with proprietary software?

Without this limitation, companies could take advantage of our pledge by incorporating open source elements into their proprietary software products and claim that they no longer have to respect our intellectual property rights. Blackboard supports open source initiatives and standards such as IMS, but believes that if a company is infringing our patents in order to make a profit, it is fair for Blackboard to request a reasonable royalty.

Does this pledge cover all of Blackboard's patents?

No. Only those listed in the text of the non-assertion pledge and foreign counterparts.

Why does this pledge focus on the nature of the license (e.g., proprietary versus open source) as opposed to the nature of the Course Management System provider (e.g., commercial versus non-commercial)?

We believe that this is a more straightforward model that provides clarity to the e-learning and open source communities. Furthermore, by focusing on the type of license, we are providing an incentive for both open source and commercial providers to create and contribute to open source projects.

Do other similar companies have non-assertion policies?

We are taking what we believe to be an unprecedented step for a product company of our size by making this pledge. We hope that other proprietary software companies in our community will follow our example.

Can Blackboard revoke this pledge?

To protect ourselves defensively, Blackboard reserves the right to revoke this pledge and assert the listed patents against any infringer that alleges patents or intellectual property rights against Blackboard, its parent or subsidiaries.

Can Blackboard revoke this pledge with respect to a party who initiates a patent reexamination request with a governmental agency?

No. Blackboard can only revoke the pledge in the event a party files a lawsuit as described above.

Can Blackboard revoke this pledge with respect to a party who files an amicus brief in opposition to Blackboard?

No. As noted above, Blackboard can only revoke this pledge in the event that a party files a lawsuit alleging patents or intellectual property against it, its parent or subsidiaries.

What if Blackboard sells the patent to a third party?

This pledge would be binding on any successor or assign to any of the listed patents.

Does this pledge only apply to United States patents?

No, Blackboard is making this pledge not only for the United States patents listed in the pledge but also all foreign counterparts to these patents.

I am covered by this pledge, what should I do next?

There is no need to do anything. The protection of the pledge automatically extends to any party that is covered by it.

I am not sure if this pledge applies to me. How do I find out?

Contact Blackboard's Chief Legal Counsel at generalcounsel@blackboard.com.

I want to learn more about Blackboard's patents. Where can I go?

You can find out more about Blackboard's patents at: <http://www.blackboard.com/patent>.