Roads To Freedom
The Making of the GPL v3

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OSS Watch

JISC

OSS Licensing

"Copyright gives the creators of certain kinds of material rights to control ways their material can be used... The rights cover: copying; adapting; distributing; communicating to the public by electronic transmission (including by broadcasting and in an on demand service); renting or lending copies to the public; and, performing in public"

(http://www.patent.gov.uk/copy/indetail/basicfacts.htm)

OSS Licensing

"The means by which the owner of copyright gives permission to another person to carry out an action, which without permission, would infringe the copyright."

(http://www.patent.gov.uk/copy/glossary/index.htm)

Licensor licenses their work to the licensee.

OSS Licensing

'Closed Source' or proprietary licences:

• usually granted as part of an End User Licence Agreement (EULA) which is enforceable under contract law

• usually do not grant rights to modify or distribute the software

OSS Licensing

All OSS Licences:

• allow anyone to distribute the software for a fee (or give it away) without royalty to the licensor

• allow modified versions of the software to be distributed by licensees (**under varying terms**)

• exclude liability for damages to the extent possible under local laws (as do most closed source licences)

• do not depend upon contract law for their operation

OSS Licensing

GNU General Public License v2

•**Significant Features**

•All modified versions of GPL-licensed software must also be distributed under the GPL (if they are distributed at all) (section 2)

• All modified versions must advertise prominently what has been modified, who modified it, and when it was modified.

• Source code must be provided with all GPL-licensed software, either directly or via a request to the licensor (section 3)

OSS Licensing

GNU General Public License v2

Significant Features

• All licensees of the software gain their licence directly from the original licensor (section 6). This preserves the licensors standing to take action against all licensees.

•No redistributing licensee may impose further restrictions on recipients (section 6)

• Additional restrictions placed on a licensee by a court mean that the licensee cannot distribute the software at all (section 7).

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GNU General Public License v2

What's the problem? (1)

• drafted using technical language specific to US law (exclusion of warranties etc)

• hybrid licence / manifesto

• manifesto's ethical opposition to digital rights management not given legal effect in licence code

• 'unintentional' incompatibility with other open source licences

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What's the problem? (2)

• integration with non-free code over web service architectures allows developers and their employers to benefit from the work of the the free software community without contributing back to it

• unwitting violators of the GPL – for example software aggregators – are hit instantaneously by penalties for violation

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What's the problem? (3)

• there is no explicit grant of the patent rights that are required to operate the software, and no requirement that a register of associated rights be attached to GPL'd code

• following on, a malicious person could create a GPL-trap by releasing code whose use would violate a third party's patent rights

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What's the solution? (1)

• *drafted using technical language specific to US law (exclusion of warranties etc)*

• GPL 3 rephrases many clauses, avoiding phraseology that is linked to any particular national legal system. In this way the FSF hope that courts will be forced to engage with the content of the licence in order to construe it, rather than falling back on what certain phrases traditionally mean.

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What's the solution? (2)

• *hybrid licence / manifesto*

• No change here...

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What's the solution? (3)

• *manifesto's ethical opposition to digital rights management not given legal effect in licence code*

• New section forbids use of the GPL 3 on software which "illegally invade users' privacy" (redundant?)

• New section also forbids "modes of distribution that deny users that run covered works the full exercise of the legal rights granted by this License"

• New section declares that "no covered work constitutes part of an effective technological protection measure" (DMCA / EUCD)

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What's the solution? (4)

• *manifesto's ethical opposition to digital rights management not given legal effect in licence code (c0ntinued)*

• "Complete Corresponding Source Code also includes any encryption or authorization codes necessary to install and/or execute the source code of the work, perhaps modified by you, in the recommended or principal context of use, such that its functioning in all circumstances is identical to that of the work, except as altered by your modifications."

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What's the solution? (5)

• *'unintentional' incompatibility with other open source licences*

• GPL 3 explicitly permits licensors to add new permissions and certain kinds of restriction to their copy of the licence. These latter include: different exclusions of warranty (internationalisation), certain kinds of patent litigation counter measures (apache v2 incompatibility thus fixed), preservation of source-spewing functionality...

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What's the solution? (6)

• *'integration with non-free code over web service architectures allows developers and their employers to benefit from the work of the the free software community without contributing back to it*

• GPL 3 permits the licensor to add a restriction that prevents modifiers of their code removing functionality that "allow(s) users to immediately obtain copies of (the program's) Complete Corresponding Source Code"

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What's the solution? (7)

• *unwitting violators of the GPL – for example software aggregators – are hit instantaneously by penalties for violation*

• *"any copyright holder may terminate your rights under this License at any time after having notified you of the violation by any reasonable means within 60 days"*

• This represents an escape route from the 'head of the posse' role that FSF have played over the last two decades. By relaxing the immediate termination provision, they are forcing licensors to 'play nice' with violators, even without the FSF's calming influence.

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What's the solution? (8)

• *there is no explicit grant of the patent rights that are required to operate the software, and no requirement that a register of associated rights be attached to GPL'd code*

• GPL 3 now explicitly grants rights to use all patents held by any of the licensors if they are necessary to use the software

• no requirement to list associated patents, but the complete grant makes this less serious (compare Mozilla licence, where you may either grant a patent or give a clear warning that permission is needed)

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What's the solution? (9)

• *following on, a malicious person could create a GPL-trap by releasing code whose use would violate a third party's patent rights*

• GPL 3 insists that licensors who have a patent licence that permits them to develop and use the software "shield downstream users against the possible patent infringement claims from which your license protects you."

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•"That's all so unbelievably cool – I just have to get involved with this process right this very second..."

• Go to http://gplv3.fsf.org/

• Create an account

• Add your comments and/or questions to the first draft

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• **"That's all so unbelievably cool – I just have to get involved with this process right this very second..."**

• Discussion Committees are formed, each with a common interest (big business, individual developers, big OSS projects etc)

• Discussion Committees read all the comments, aggregate them into issues.

• Summaries of these issues, along with summaries of the submitted arguments on both sides, get sent to FSF to inform the next draft.

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•**Any problems so far?**

Linus Torvalds has objected strongly to the provision of GPL 3 which mandates the inclusion of all necessary signing keys to compile and run covered code.

Let's refresh our memories on what this bit of the licence draft actually says:

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Any problems so far?

- "Complete Corresponding Source Code also includes any encryption or authorization codes necessary to install and/or execute the source code of the work, perhaps modified by you, in the recommended or principal context of use, such that its functioning in all circumstances is identical to that of the work, except as altered by your modifications. It also includes any decryption codes necessary to access or unseal the work's output. Notwithstanding this, a code need not be included in cases where use of the work normally implies the user already has it."

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Any problems so far?

• Torvalds feels that it is not the place of software licences to combat DRM. He argues that the appropriate response to hardware-backed DRM is to not buy any equipment which implements it, and the appropriate response to content that is encumbered by DRM is to make better content and release it under (say) a Creative Commons licence.

• He interprets the previous clause as saying that – for example – Red Hat would have to give out the private keys they use for signing their update rpms. He sees this as impractical and unnecessary.

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Any problems so far?

"We want to discourage use of GPL to further DRM efforts," Freedom Software Law Centre counsel Richard Fontana said at the Open Source Business Conference (OSBC) in San Francisco on Tuesday. The Freedom Law Centre represents the FSF.

Torvalds last month ruled out putting the Linux kernel under GPL 3.0 because he believed it required contributors to make their private signing keys available. The draft GPL 3.0 states DRM is "fundamentally incompatible with the purpose of the license".

Fontana said: "Linus Torvalds has misread it... We require disclosure of the codes if it's necessary to make the software run."

http://www.theregister.co.uk/2006/02/15/gpl_drm_license/