

About the publication

Information wants to be free. Information also wants to be expensive. Information wants to be free because it has become so cheap to distribute, copy, and recombine — too cheap to meter. It wants to be expensive because it can be immeasurably valuable to the recipient. That tension will not go away. It leads to endless wrenching debate about price, copyright, “intellectual property”, the moral rightness of casual distribution, because each round of new devices makes the tension worse, not better. zu fuizf

— Stewart Brand The Media Lab - Inventing the Future at M.I.T.

The tension underlying the value of information translates into two predominant software paradigms: Free and Open Source Software (FOSS) and proprietary software. The criteria for differentiation are based on control over the software/information. With proprietary software, control tends to lie more with the vendor, while with Free and Open Source Software, it tends to be more weighted towards the end user. But even though the paradigms differ, they use the same copyright laws to reach and enforce their goals. From a legal perspective, Free and Open Source Software can be considered as software to which users generally receive more rights via their license agreement than they would have with a proprietary software license, yet the underlying license mechanisms are the same.

However, as legal systems differ throughout the world there are significant differences in how Free and Open Source Software licenses are treated in different countries, and it can be difficult to obtain reliable information on national interpretations. The IFOSS Law Book engages with this issue by providing a clear yet thorough analysis of Free and Open Source legal matters by national legal experts. The first edition covered thirteen countries. This second edition adds four more countries, bringing the number to seventeen and new editions will expand over time to explore more. The purpose of the IFOSS Law Book is to provide a clear, compelling and simple way for legal professionals, students and academics, and broader policy makers, to contextualize the ramifications and imperatives of the field in their own nation, and in the nations of others. This lofty goal is supported by necessity; the very nature of Free and Open Source Software assumes collaboration to drive value, and such collaboration is by the nature of the Internet not confined to national borders, yet it is simultaneously defined in legal terms by their differing systems, laws and interpretations of best practice in the management of creative goods.

The IFOSS Law Book does not endeavour to be the sole required reference for legal aspects of Free and Open Source Software. Rather, it is intended to become the place where legal experts confronted with a legal question under a foreign jurisdiction can turn for an understanding on how Free and Open Source Licenses are treated under that law. From this starting point, experts can seek specific information or seek the advice of a local legal counsel. In short, the

IFOSS Law Book is positioned as a bench mark reference that helps people quickly contextualize the key issues in the field.

Finally, it is important to point out that the IFOSS Law Book is not written for those who endorse FOSS for ideological or practical reasons. The publication is targeted towards all those that encounter FOSS in their profession.

Free Software or Open Source Software

The Free Software and the Open Source Software movements largely pursue similar goals and endorse similar software licences. But historically, both movements carry different emphases. Where the “Free Software” movement focuses on the rights (the four freedoms) which Free Software provides to its users, the “Open Source Software” movement points to its Open Source Definition and the advantages of peer-to-peer software development. The IFOSS Law Book does not endorse any emphasis. It uses the term Free and Open Source Software (FOSS) to cover both Free Software and Open Source Software.

FOSS licences

The goals of FOSS are realised through licences governed by copyright law. These licences tend to take an unusual form compared to traditional proprietary documents. Instead of providing a narrow grant of use with a long list of exceptions and restrictions, FOSS licences provide a broad grant of use with few restrictions. These licences are often divided into three categories: non-Copyleft, weak-Copyleft and strong-Copyleft. It is the analysis of these licenses under local copyright law by local legal experts that lies at the heart of the IFOSS Law Book.

Working method

This law book is a product of its time. Its management is distributed across three countries and two continents, while its contributors are linked through technology as much — if not more — than their formal legal positions and firms. The two threads underlying the organization of the publication are that the book itself will provide a neutral and lasting reference, while the local chapters will be developed in a flexible enough manner to accurately reflect the state of the art regarding interpretation for the nation in question. As such the book actually has two forms; an “evolving” form based at <http://www.ifosslawbook.org/> that sees each chapter continually refined and provides a mechanism for any reader to contribute notes and clarifications as necessary, and a “complete” form that is physically published through Open Source Press, Germany.

Like any work of reference, this book is intended to be accurate and trustworthy, and it employs several methods to deliver the highest level of fidelity in this regard. The first and foremost is the careful selection of chapter authors. All of the initial authors are experienced, driven professionals sourced from the

European Legal Network, the largest network of its kind, and the primary global resource for Free and Open Source Software legal knowledge as of 2014. The second method is to openly and continuously invite the broader network to review, comment and improve the chapter texts, positioning the publication in clear terms as an open reference intended to benefit all. The third and by no means least important method is to ensure that third party experts — be they legal professionals, technical experts or from another field altogether — can easily register and provide feedback on chapters and the book itself through the main website.

The governance of the IFOSS Law Book is currently limited to a handful of parties. As the publication progresses, it will develop a formal governance structure based on maintaining objective analysis, improving its potential for sustainability and ensuring fair representation for diverse legal and social systems. This governance will be drawn from existing contributors, the network from which they originate and from the example set by other publications in this field. As with all other aspects of this publication, contributions towards its development is welcomed from all interested parties.

The IFOSS Law Book currently provides three forms of information for each country covered:

- An introduction to software protection (in general) in the nation
- A general analysis of FOSS under local legislation
- A overview of local FOSS cases (if any)

The second edition is edited by Ywein Van den Brande, Shane Coughlan and Till Jaeger.

License

The IFOSS Law Book as a whole is published under a CC-BY-ND license. The text can be freely copied and shared by any party under these conditions. Physical copies may be purchased, but it is also available at no cost in electronic form at our website.

Conclusion

FOSS is no longer a new, challenging and unproven method regulating the creation, use and redistribution of creative goods for digital purposes. In the past twenty five years it has matured into an accepted, proven and compelling proposition for commercial and non-commercial entities alike, delivering value in terms of both productivity and economic activity. As it has matured, so too has the legal understanding regarding its use on a nation by nation basis. The first edition of the IFOSS Law Book contributed hereto with a comprehensive overview of the understanding of FOSS under the legislation of thirteen countries.

It is with this in view that the editors present this second edition of the International Free and Open Source Software Law Book (IFOSS Law Book) that covers four more countries. We hope and expect that it will provide a useful and trusted source for users and advisors seeking information on Free and Open Source Software issues under foreign legislations.

Enjoy the book.

Ywein Van den Brande — Shane Coughlan — Till Jaeger

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