FOSS licensing and legal issues

COMP8440: FOSSD
Lecture 6

The Early Days ...

In the early days of free software, many projects used very simplistic licences

An example is the original licence for Samba

Why was this such a poor choice for a license?

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What does a licence do?

A copyright licence gives permissions

Copyright defaults would prevent free software

e.g. prevent distribution of the software

Key permissions needed

Permission to use the software

Permission to study the software

Permission to modify the software

Permission to distribute modified or unmodified copies

It can also set conditions

Force modified versions to be under the same licence

Require modifications to be clearly marked

Advertising or marketing restrictions

Disclaim warranty or other guarantees

... and lots of others ...

Lots of licenses

A wide range of FOSS licenses

>> OSI lists 76 approved licenses, 9 as 'widely used'
>> GNU lists 95 free software licenses plus 33 non-free licenses

Key licenses

>> GNU GPL (General Public Licence) and variants, including LGPL (Lesser GPL)
>> BSD Licenses (original or modified)
>> MIT/X11 License
>> Apache License

X11 License

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(excerpt from GNU GPL version 3)

GNU GPL vs LGPL

LGPL is "Lesser GPL"

Strong copyleft versus weak copyleft
> GPL copyleft covers work as a whole
> LGPL copyleft covers only LGPL portion

Use for software libraries
> Allows linking with proprietary programs
> Widely used for library code
> Also used to avoid inter-project licensing problems

Use discouraged
> 'L' changed from Library to Lesser in 1999
> Loses much of the GPL leverage effect that encourages free software

GNU GPLv3

A recent evolution of the GPL (June 2007)

- Public discussion process, over 18 months
- Much debate on adoption among existing GPL projects

Main changes

- Internationalisation and clarification of legal language
- Stronger patent provisions
- Prevention of hardware restrictions ("tivoisation")
- Optional clauses to aid license interoperability
- DMCA avoidance ("effective technological measure")

Multiple Licensing

Can offer multiple licenses on one program
- Allows recipients to choose the license
- A common solution to inter-project license problems

The 'or-later' clause
- A form of multiple licensing
- Allows for license evolution
- Involves a high degree of trust of license originator

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it under the terms of the GNU General Public License as published by
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(at your option) any later version.

(Excerpt from a GPLv2+ license header)

Areas of Law

- IANAL – I am not a lawyer
  - This is not legal advice
- FOSS intersects with many areas of law
  - Copyright – who can distribute or modify a work
  - Patents – government granted monopolies on application of ideas
  - Trade Secrets – stuff that people want to keep secret
  - Trademarks – names that are owned
- 'Intellectual Property'
  - A term greatly disliked by many in the FOSS community
  - Can lead to confusion as it lumps together very different areas of law

Boundaries

- How far does your copyright extend?
  - Copyright law gives a work's owner rights over modified versions
- A key concept for FOSS licensing
  - Often arises in questions on whether a license applies
  - Common (but misleading) rule of thumb on 'linking' and 'same address space'
  - Is a plugin module a derived work of the program?

A "derivative work" is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a "derivative work"

(US legal definition of derivative work)

Copyright Policies

- Many projects have a 'copyright policy'
  - Some projects require copyright assignment
    - Facilitates enforcement and re-licensing
    - May add 'legal friction' to development
  - Some projects use a 'signed-off' system
    - Pioneered by the Linux kernel
    - Implies agreement to Developers Certificate of Origin
    - Adoption of signed-off a result of SCO lawsuit
  - Some projects require non-corporate copyright
    - A result of some curious legal history for Samba
  - Some projects require a sign-up process
- Policies can backfire
  - Companies have used the policies to effectively avoid their license obligations

Patents

- A monopoly on an idea
  - A (limited term) government granted exclusive right over applications of the idea
- Problems for FOSS
  - Expensive to gain, maintain and fight
  - Many software patents are trivial, but dangerous
  - Independent invention is not a defence
  - Impossible to license for FOSS use in most cases

If people had understood how patents would be granted when most of today's ideas were invented, and had taken out patents, the industry would be at a complete standstill today

(Bill Gates, 1991)

Patents (continued)

- Efforts to defend against patents
  - Open Invention Network
    - Patent pool
    - Peer-to-patent
    - Defensive publications
  - PubPat
    - Patent challenges
- License terms
  - Many FOSS licenses have patent defence clauses
  - Try to ensure we all sink or swim together
    - GPLv2 has patent defence, but Microsoft tried to sidestep it
    - GPLv3 strengthens those terms

Trademarks

- Exclusive right to a name or logo
    - Usually tied to a product type
    - Must be actively defended, or it can be lost
- Should a FOSS project register a trademark?
    - Can prevent abuse of projects name
    - Can be expensive (especially in time) to defend
- Well known FOSS trademarks
    - Linux trademark (managed by Linux Foundation)
        - First gained as a result of a scam attempt
    - Distro trademarks (eg. RedHat)
        - Interesting problems for derived distributions
    - Mozilla Firefox trademark
        - led to Iceweasel
    - OSI Open Source trademark
        - not on the words, only on the logo

EULAs

- End User License Agreement
  - Rarely read, but can be toxic
  - Care needs to be taken by FOSS developers
- Common problems
  - Anti reverse engineering terms
  - Non-compete terms (eg. BitMover license)
  - OS or hardware ties
    - Can affect wine and virtualisation systems

License Enforcement

- What if a FOSS license is violated?
    - Infringer is approached, in a friendly fashion
    - Often infringement is not deliberate
        - Or results from misunderstanding FOSS
    - Most projects seek compliance, not payment
    - Can often be solved with a phone call or email
- When that fails
    - Seek help from groups like the SFLC
        - Software Freedom Law Center
    - If GPL software, contact gpl-violations.org

Further reading

- Key FOSS law sites
  - pubpat.org – patent reform and information
  - softwarefreedom.org – defending FOSS
  - groklaw.net - FOSS law discussions, but inactive since 2013