

# FOSS and the law

## COMP8440: FOSSD Lecture 6

# IANAL

(I am not a lawyer, this is not legal advice)

# Areas of Law

- FOSS intersects with many areas of law
  - Copyright – who can distribute a work
  - Patents – government granted monopolies on 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

# Derived Work

- 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
- 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](http://gpl-violations.org)

# Further reading

- Key FOSS law sites
  - [groklaw.net](http://groklaw.net) - FOSS law discussions
  - [pubpat.org](http://pubpat.org) – patent reform and information
  - [softwarefreedom.org](http://softwarefreedom.org) – defending FOSS