

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

Further reading

- Key FOSS law sites
 - groklaw.net - FOSS law discussions
 - pubpat.org – patent reform and information
 - softwarefreedom.org – defending FOSS