

The critical importance of use-neutrality in F/OSS licensing

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1) Objectives

- F/OSS
- Use-discriminatory

2) Ineffective **and** harmful

3) Cooperation?

Importance

- Remembering our origins and what we're about
- “Ethical” licensing

Me

- MPL
- FOSSASIA speaker
- Data protection / human rights
- IANAL

Where I'm coming from

- I support:
 - progressive initiatives in F/OSS communities
 - pursuit of UDHR objectives
- I oppose:
 - use-discrimination in F/OSS licenses

Licensing objectives

Freedom 0

The freedom to run the program as you wish, for any purpose

Freedom 0

“The nonfree program controls the users, and the developer controls the program; this makes the program **an instrument of unjust power.**”

Seeks to **protect** users.

DFSG / OSI Definition

6. No Discrimination Against Fields of Endeavour

DFSG / OSI Definition

“distributed peer review and transparency of process ... higher quality, better reliability, greater flexibility, lower cost, and an end to predatory vendor lock-in.”

Seeks to facilitate collaboration.

The Hippocratic License 2.1

“It is Licensor’s express intent that all use of the Software be consistent with ...

United Nations Universal Declaration of Human Rights ...”

The Hippocratic License 2.1

“specifically prohibits the **use** of software to violate universal standards of human rights”

Seeks to **control** users.

Islam Copyright Public License

CAUTION: unchecked machine-translation from Arabic

[It is forbidden to use the license in any work that... is indicative and advertised on advertisements...

- that promote falsehood, immorality, blasphemy
- institutions of usury and gambling and forbidden earnings, such as advertising for interest-based banks, insurance companies, factories and shops selling evils
- announcements of praise and praise for the deceased, especially if he is not a Muslim.]

Embedding UDHR is ineffective

Profound misunderstanding

- Aspirational
 - “shall strive ... to secure their ... recognition and observance”
- **Immense** undertaking
- Not quite universal

UDHR (1948)

12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

As enforceable law

- UDHR (1948)
 - 73 words
- Local, sector-specific laws (1970s)
- Directive 95/46/EC (1995)
 - 12k words
- GDPR (2016)
 - 56k words

The right tool for the job

Human rights principles

vs.

Enforceable legislation and jurisprudence

vs.

Regulatory powers

vs.

Private-sector contract/license terms

But decades of legislative progress and jurisprudence removes uncertainty!

- No:
 - Jurisdiction-specific laws effectively excluded
 - Jurisdictional differences make intention unclear
 - → lack of contractual certainty
 - → unenforceable!

Not quite universal

- Cairo Declaration of Human Rights in Islam
- Bangkok Declaration

Bangkok Declaration

- “commitment to the principles contained in [UDHR]”
- “non-confrontational approach ... Discourage any attempt to use human rights as a **conditionality** for extending development assistance ... respect for national sovereignty” (emphasis added)

Bangkok Declaration

“States have the primary responsibility for the promotion and protection of human rights”

Unlikely to stop “bad guys”

- Outside jurisdiction
- Outsource
- Sovereign immunity
- Pay for closed source!

“May not be used for assembling
terrorist weapons”



“May not be used for writing terrorist manifestos”



“Learnings may not be used for
oppression”

1984

George Orwell

Live and let live
vs.
facilitating harm



GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS



Implementing
the United Nations
"Protect, Respect and
Remedy" Framework



United Nations

Guiding principles on business and human rights

			Actor	
			State	Private Sector
Human rights obligation		Protect		Respect

Guiding principles on business and human rights

“Appropriate action will vary according to ... the extent of [an actor’s] **leverage** in addressing the adverse impact.

...

Leverage is considered to exist where the [actor] has the **ability to effect change** in the wrongful practices of an entity that causes a harm.”

(emphasis added)

Actions with negligible leverage

Impact on establishing norms	
Negligible	Material
Empty virtue signalling lip service	Do the right thing Support progress
Dishonest signalling greenwashing	

Harmful to F/OSS

Article 23

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.



Public Domain

If you give me six lines written by the hand
of the most honest of men, I will find
something in them which will hang him.

— Cardinal Richelieu (disputed)

Process abuse risk

- “Harmony” as an excuse to exclude
- Lower standard for civil than for criminal law

Outrage-industrial complex

- Wilfully creating drama is intentional harm
- Abandoning truth-directed methods of persuasion
 - Friend/foe identification instead
- Destructive to F/OSS communities

We all benefit from the work of
people we profoundly disagree with,
or even despise.

License evaluation

- Out of reach for most developers
- OSI approval fills a critical gap
- Evaluating a use-discriminatory license is necessarily use-specific!

Oppression

Injustice in a vendor/licensor imposing their will upon another human being

It's all too hard...

- Use / purchase / commission proprietary software instead!

Ineffective **and** harmful

Well-intentioned attempts to impede

- Unlikely to stop “bad guys”
- Harmful to F/OSS communities
- Really about developers’ feelings rather than about the rights of all humans?

But I want to decide who gets to use
my work!

But we're responsible!

- We have to do something
- {this} is something
- We have to do {this}!

- “Impulse activism”

But I **don't like** that bad people will do bad things with software that I contributed to!

- Developers' feelings are more important than the rights of all humans?
- Empty virtue signalling
- Social control
 - Private contract / licensing
 - Law, regulation
 - Custom (civility)
 - Religion
 - Professional ethics
 - Labour unions

Actions with negligible direct leverage

		Impact on establishing norms	
		Negligible	Material
Cost	Negligible	Empty virtue signalling lip service Dishonest signalling greenwashing	Do the right thing Support progress
	Material	Treating harm to existing values as an externality	Dilemma Public demonstrations of commitment limit free-riders

Cooperation?

An “ethical” source program

- Build a body of use-restricted software
- Recruit users, developers
- Seed with existing body of OSS
 - Too hard to repeat Gnu Project
 - Most OSS can have discriminatory restrictions added!
 - But F can't...

OSI

- License approval?
- Affiliate membership?
 - Desirable / ~compatible goals
 - Approaches that aren't use-discriminatory licensing
- Large body of overlapping source code
- Remain open to improvement

Closing thoughts

F/OSS is both about protecting the rights and freedoms of **users** and about sustaining our ability to cooperate with people **we don't like**.

The freedom that people have to use, to modify, and to share the software that we write, **in any way that they wish**, has changed the world. We should not be in a hurry to give this up.

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