

copyleft-next

an introduction

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Partial professional bio

- Open Source Licensing and Patent Counsel, Red Hat, 2008–present
- Counsel, Software Freedom Law Center, 2005–2008
Co-authored GPLv3/AGPLv3/LGPLv3 with RMS & Eben Moglen

Disclaimer

My involvement in the subject matter of this presentation is entirely personal and is unconnected to my current employment.

Views expressed in this presentation are solely my own and do not represent those of any current or past employer or client.

IANYL. TINLA.

What is copyleft-next?

- Effort to transparently and collaboratively draft a new, simple, legally sound GPL-like (strong copyleft) license
- Vehicle for exploring ideas for reform of FLOSS licensing and license-drafting methodology
- Initially a fork of GPLv3, but soon evolved into radically different text
- Initial commit 2012-07-03; version 0.1.0 released 2013-01-26

"Strong copyleft"

- Definition of copyleft
- "Strong" refers only to FSF-influenced orthodox understanding of GPL copyleft **scope** (vs. LGPL, MPL etc.)
- Does not refer to relative restrictiveness of non-scope features (GPLv3 is not stronger/weaker than GPLv2)
- copyleft-next assumes strong copyleft is legally implementable and worth implementing

Drafting objectives

- Brevity, conciseness, developer+lawyer comprehensibility, structural clarity, internal consistency, nonbaroqueness
- Strengthen legal implementation of core GPL features
- Address proprietary relicensing problem
- Ease enforcement *and* compliance
- Explore new ideas for FLOSS licensing features
- Commercial reasonableness

Origins

Some historical antecedents

- **Every** post-GPLv2 copyleft license has been a reaction to GPLv2,
 - But all mainstream attempts (other than (A)GPLv3) are 'weak'
 - All 'known' attempts (other than (A)(L)GPLvn) reject GPL as basis
- Allison Randal: *GPLv3, Clarity and Simplicity* (2007-05-14)
- Bob Gomulkiewicz, "SimPL" (OSI approval 2007-11-07)

FOSDEM 2012: where I left off

- Inherent/perceived GPL complexity (+ community license interpretation vacuum) **may** be contributing **needlessly** to GPL competitive disadvantage
- Atmosphere of unnecessary inscrutability & hyperlegalism surrounds GPL; developer disempowerment
- Developer preference for licensing minimalism
- Think about GPLv4 (or a non-FSF-drafted alternative); "as short as Apache License 2.0"

Some assumptions I made

- GPLv2/GPLv3/AGPLv3 (like all other FLOSS licenses) are **imperfect** and susceptible to improvement
- Licensing reform should not be monopolized
- Enough developers read licenses that their content matters

Two pivotal events in May 2012

Brett Smith left FSF ...



[Brett Smith waits to greet people](#) by Free Software Foundation. License: CC BY-ND 3.0 Unported.

... and Bradley called me a 'gadfly'
(FaiF 0x29)



[Cephenemya stimulator, Deer botfly](#) by Karsten Heinrich and G. Kothe-Heinrich. License: CC BY-SA 3.0 Unported.

Why did I launch copyleft-next?

- If strong copyleft is in disfavor, perhaps a brand-new effort is needed to revive it, free of **historical baggage**; optimize copyleft/non-copyleft balance in commons
- Influence next generation of copyleft (and noncopyleft) licenses)
- Influence expectations for FLOSS legal drafting projects
- Because it's fun?
- Because GPLv3 feels **unfinished** to me

Style

Evidence of complexity reduction

- Word counts
- Line counts of canonical plain text versions
- Average size of license sections

Word counts

copyleft-next-0.1.0	1423
Apache License 2.0	1581
GPLv1	2063
MPL 2.0	2435
GPLv2	2968
GPLv3	5644

Line counts

Apache License 2.0	202
copyleft-next-0.1.0	216
GPLv1	251
GPLv2	339
MPL 2.0	373
GPLv3	674

License section size

copyleft-next-0.1.0	8.6
GPLv1	10.4
GPLv2	14.3
Apache License 2.0	19.9
GPLv3	24.2
MPL 2.0	24.7

Substance

Developed by reduction of GPLv3

- Test: is incremental complexity associated with a provision necessary/worthwhile?
- Outbound GPL compatibility provides room to experiment
- Can build atop background GPL interpretive history

Examples of deleted material

- Superfluous phrases, truisms, ignored aspirational/normative rules, clauses with forgotten rationale
- Provisions having no counterpart in GPLv2 or other FLOSS licenses, or which appear to have served no purpose
- Some provisions more suited to a FAQ
- E.g.: entity transactions, SIFMA contractor clause, Metzger disclaimer savings clause, acceptance clause (Vasile), Sun expanded 'copyright' definition, BitTorrent distribution clause, right to remove additional restrictions; section 7 additional permissions/additional requirements

Some more interesting deletions

- Anti-anti-circumvention clause: very narrow, probably never used, and needs more legal research; **political value of a provision is never sufficient**
- All patent-related material added to GPLv3 other than the express patent license grant is deleted
- 'Anti-Tivoization' provisions (for a while removed to a licensor-opt-in supplementary license document)
- Liberty-or-death becomes one sentence in 'no-further-restrictions' rule

Elegantly expose deep structure of GPL

- Licensee gets multiple GPLs from upstream licensors, each covering what the licensor originally distributed; mere distributors are licensees who pass through upstream licenses
- copyleft-next starts out stating that 'We' (a given upstream licensor) give you a copyright and patent license covering the work 'We' release
- Patent license has identical scope to GPLv3 patent license, but re-presented in commercially reasonable form

Clearer implementation of strong copyleft

- **Derived Work** = "a work of authorship that copies from, modifies, adapts, is based on, contains, transforms or translates all or part of the Received Work such that copyright permission is required."
- **Separate Work** = "separate from and independent of a particular Covered Work and is not by its nature an extension or enhancement of the Covered Work, and/or a runtime library, standard library or similar component that is used to generate an Object Code form of a Covered Work"
- Copyleft-covered enhancements explicitly limited by **Mere Aggregation** (defined simply as aggregation of Derived Work and Separate Work)

Enforcement and compliance

- Severability clause; protection against upstream license revocation
- Basic distribution conditions are rationalized (e.g. need only preserve existing legal notices; needn't include copy of license text; no UI preservation requirements)
- Object code distribution requirements greatly simplified (3-year written offer eliminated [Villa]; physical products can point to URL where source is available for two years)
- Corresponding Source definition closer to GPLv2 approach, but influenced by discussions with bkuhn (most notably, new requirement to provide list of 'Separate Works' used in building and installing)

Tackling copyleft misuse



Proprietary relicensing poison pill

- Rationale; problem ignored by all previous copyleft licenses
- If 'We' do proprietary relicensing, 'Your' downstream copyleft requirements evaporate (no upstream monopolization of proprietization)
- Influenced by Qt/KDE treaty; intended to prevent misuse
- Most difficult provision to draft; GPLv3-ish style

Anti-badgeware provision



- "Legal Notices" distributors must preserve include "author attributions", but exclude "logos or other graphical images"

Upgradeability to later versions

- GPL approach: if no version designated, use any version; if "or later" designated, can use later versions; otherwise limited to 'this' version
- Most other copyleft licenses have built-in upgradeability provisions
- copyleft-next compromise: permission to use later versions unless licensor explicitly removes such permission, Linus-style (Linksvayer)
- Exposes a governance issue (particularly since rapid upgrade cadence is possible)

License compatibility

- Entirety of complex GPLv3 section 7 deleted
- GPLv2 policy on inbound compatibility should apply via straightforward interpretation of no-further-restrictions rule
- Explicit compatibility for Apache License 2.0
- Explicit outbound GPLv2+/AGPLv3+ compatibility

Termination

- GPLv2: "harsh" automatic termination (important feature for US-based enforcement)
- GPLv3: complex 30/60 day cure and repose schemes for automatic license "reinstatement"
- copyleft-next has simpler 30-day cure period on notice of violation; preserves GPLv3 clause disallowing "download a new copy" trick
- More explicit patent peace provision, but tailored to "patent aggression" like MPL 2.0
- More liberal than GPL in making 'freedom 0' nonterminable even for Derived Works

Process

Legacy of nontransparency

- Pre-GPLv3: norm of private drafting
- GPLv3 (2006-2007): similarities to legislative/regulatory process; lawyers for vendors, commercial end-users relatively influential; spectre of regulatory capture
- Project Harmony (2010-2011): Chatham House Rule; dominated by commercial/lawyer interest groups

Adopt contemporary methodology of community projects

- Unprecedented for FLOSS license-drafting effort
- One reason: encourage developer involvement
- git and public git repository (inspired by Twitter IPA [April 2012])
- publicly-archived, open-subscription mailing list
- public and publicly-advertised IRC channel

'Governance', community-building

- For better or worse I am sabd(nnfl)
- Vast majority of commits have been by me, thus far
- Small community of participants
- Goal to increase participation by FLOSS project developers (but unsure how to attract interest)
- Ambivalence towards increasing lawyer involvement
- Ambivalence towards "marketing"
- 'Later versions' issue makes governance more significant

Harvey Birdman Rule



Arguably one of the more significant advances
produced by copyleft-next

HBR has two (overlapping) aims

- Maximize transparency in license-drafting
- Avoid **undue** influence of non-developer interest groups
<cough>lawyers</cough>

HBR nontransparency cure

Except in extraordinary cases, private telephone calls, private teleconferences, private in-person meetings, and private email communications shall not be used to discuss substantive development of this project.

Should such private communications nevertheless occur, participants in such communications are expected to publish summaries of any relevant discussions in a manner or medium accessible to the general net public.

Other HBR planks (paraphrased)

- No contribution by word-processing documents
- No private/Chatham-House-Rule mailing lists
- No top-posting in mailing list replies
- Proposed changes to HBR must be HBR-compliant

Objections

Two related general objections

- This will just increase "license proliferation"
- We don't need any new licenses!

License proliferation?

- Obviously not an objection to the project *as such*
- Current level of license diversity is tolerable, and projects promote de facto standardization
- No commons-fragmentation problem
 - copyleft-next is one-way GPL-compatible
 - GPL-compatible licenses =
copyleft-next-compatible licenses
- copyleft-next should be seen as proposed **gradual** (painless) successor to GPLv2/GPLv3
- Doesn't decrease current level of FLOSS licensing comprehensibility

"No new licenses" could mean:

- GPLv2/GPLv3 (etc.) are incapable of improvement or could not possibly benefit from improvement
- Barriers to entry: We've settled on our quota of legitimate license **stewards**; henceforth (occasional) new licenses are acceptable but only from those stewards

Conclusion

Possible future developments

- Versioning cadence unclear (but >0.1.0 version likely in very near future)
- "Affero flavor" of copyleft-next?
- Further liberalization of inbound/outbound license compatibility?
- copyleft-next as CC-style suite of similar form licenses (noncopyleft, weak, strong, Affero-flavor)?

Please participate!

- git repo: gitorious.org/copyleft-next (mirrored at github.com/richardfontana/copyleft-next)
- mailing list: lists.fedorahosted.org/mailman/listinfo/copyleft-next
- IRC: [#copyleft-next](#) (freenode)
- issue tracker: RSN (can use github for now)
- website: copyleft-next.org (no content yet)

Thank you!



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