Legal issues from a radical community angle

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Outline

1. Legal fundamentals of Debian

2. Some legal issues from Debian trenches

3. Looking forward

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1. **Legal fundamentals of Debian**

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Debian at a glance

OS

1993 created by Ian A Murdock

today
- web server market lead (31.2%, Jan 2014)[1]
- huge archive ($\approx$30'000 pkgs), 12 architectures
- base for half of the active Free Software distros[2]

Project

Social Contract (excerpt)   (1997)

1. 100% Free Software
3. don't hide problems
5. works that do not meet our Free Software standards

$\approx$ 1'000 members world-wide + $\approx$ 4–5'000 contributors, volunteers

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[1] w3techs.com
[2] distrowatch.com

Fundamental #1 — DFSG

To verify the *"100% Free"* promise, you need to define "Free".
The Debian Free Software Guidelines (DFSG) give such a definition.

        http://www.debian.org/social_contract#guidelines

- require the 4 freedoms to uphold
- + distribution specific provisions
- basis for the Open Source Definition
- apply to all sorts of content
    - ▸ firmware, documentation (PDFs!), artwork, music, . . .

Fundamental #2 — Governance

Constitution   (1998)
Structures and rules of a Free Software-compatible democracy

on paper: pretty formal
- bodies: DPL, delegates, technical committee, secretary, . . .
- procedures: NM process, general resolutions, . . .

in practice: flat, bottom-up, almost anarchic
- teams (100x), maintainers (1'000x)
- all (almost entirely) autonomous in technical decisions

Fundamental #3 — Independence

no (or very little) corporate control over Debian

- no (single) company babysitting us
- living up on: donations, gift-economy
- truly remarkable among "major" distros

drawback: limited access to typical corporate resources

assets (money, hw, IP) held by trusted organizations world-wide

- e.g.: SPI (US), FFIS (Germany), debian.ch, . . .
- to reduce SPOF risk

Some consequences

At different scales, these traits apply to most "community-driven FOSS projects".

Some consequences:

- top-down *"thou shalt not..."* doesn't work
- limited access to legal advice
- some "US-centrism"

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Copyright

Main © concerns for a FOSS distro:

- keep Debian (main) 100% Free Software   (mission)
- keep Debian archive legally (re-)distributable   (legal)
- ~~copyright assignment~~

how to do review of © notices in an almost anarchic setting?

Lesson learned

You don't.

Delegating review to individual maintainers doesn't work at this scale.

not all hackers are equally attentive (or even interested) when it comes to legal matters

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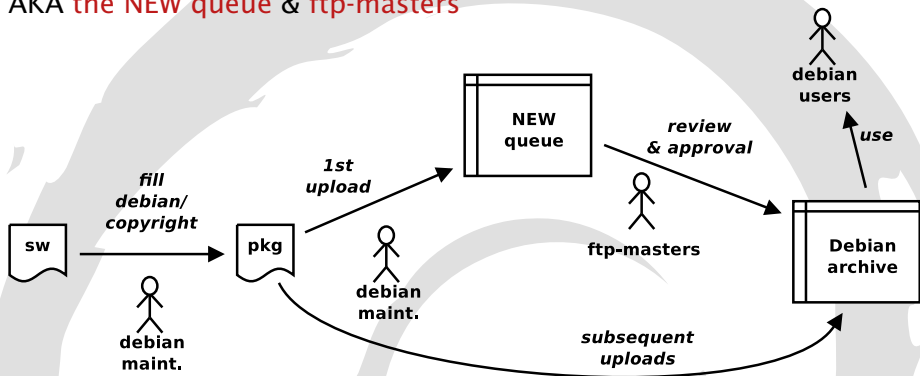how to do review of © notices in an almost anarchic setting?

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Package qualification

AKA the NEW queue & ftp-masters

- 2 tier review process
  peer review—among "legal geeks"—might be a viable alternative
- main purpose: check DFSG free-ness

Quality assurance on debian/copyright

At Debian scale, (semi-)automated QA on license information is desirable, e.g.:

- do we link OpenSSL w/ GPL (unwillingly)?
- how many GPLv3-incompatible packages do we have? (2007)
- what happens when `libbdb` is relicensed to AGPL? (2013)
- . . .

Idea

Heuristics to cross-check `(Build-)Depends` w/ licensing information → find candidates for further review.

Requirement: machine readable debian/copyright

Machine-readable debian/copyright

2007 early versions
2012 version 1.0

http://www.debian.org/doc/packaging-manuals/
copyright-format/1.0/

```
Format: http://www.debian.org/doc/packaging-manuals/copyright-format/1.0/
Upstream-Name: X Solitaire
Source: ftp://ftp.example.com/pub/games

Files: *
Copyright: Copyright 1998 John Doe <jdoe@example.com>
License: GPL-2+
 This program is free software; you can redistribute it and/or modify it under the terms of the
 GNU General Public License as published by the Free Software Foundation; [snip]
 .
 On Debian systems, the full text of the GNU General Public License version 2 can be found
 in the file '/usr/share/common-licenses/GPL-2'.

Files: complex-1/*
Copyright: Copyright 1998 Jane Smith <jsmith@example.net>
License: GPL-2+ with OpenSSL exception
 [LICENSE TEXT]

Files: complex-2/*
Copyright: Copyright 1998 Jane Smith <jsmith@example.net>
License: GPL-2+ or Artistic-2.0, and BSD
 [LICENSE TEXT]
```

Machine-readable debian/copyright — example

- real-life, large-ish example
- 77 license blocks, 30 of which are distinct
- 1427 lines
  - ≈ 200: globbing and copyright notices
  - ≈ 600: verbatim inclusion of unknown (to the ontology) licenses
  - ≈ 500: verbatim inclusion of known licenses, but not popular enough [in Debian] to be shipped under /usr/share/common-licenses/ (e.g. CDDL, MPL)

Machine-readable `debian/copyright` (cont.)

Potential: huge corpus of (reviewed) copyright/license notices for popular Free Software.

Archive coverage:

date	release	source packages	archive coverage
Feb 2011	Squeeze	$\approx$ 2'800	19%
May 2013	Wheezy	$\approx$ 7'400	42%
Jan 2014	*unstable*[3]	$\approx$ 9'700	46%

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[3] sid snapshot, 29/01/2014

Machine-readable debian/copyright vs SPDX

| | (machine-readable) |
SPDX	**debian/copyright**
for companies / BOMs	for hackers
extensional	intensional
machine readable	machine + human readable

- compatible short-license names
- prototype bidirectional converters available (via Config::Model)

Patents

Like all large software assemblies, the Debian archive is a patent minefield. What isn't?

as everyone does, we did some risk assessment

Lessons learned:

1. hysteria, FUD has won
   - communities tend to avoid only the usual suspects
   - black-or-white approach to an inherently blurry matter
   - false sense of security

   this has led to the debian-multimedia fork

2. "thou shalt not speak about..." doesn't work
   - recurrent public threads: *patents spotted, remove $pkg!*

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Patents (cont.)

We need training material and reusable policies on patents.

- community (non-company) oriented
- not (only) US-specific

We discussed our needs with SFLC to produce some of it:

Community Distribution Patent Policy FAQ
http://www.debian.org/reports/patent-faq

Debian Position on Software Patents
http://www.debian.org/legal/patent

> [. . .] patent concerns expressed publicly may turn out to be unfounded but create a good deal of *fear, uncertainty, and doubt* in the meantime [. . .] *please refrain from posting patent concerns publicly* or discussing patents outside of communication with legal counsel, where they are subject to attorney-client privilege.

We need (a lot) more.

Trademarks

As many projects we own a number of trademarks

- "Debian"®, ™

Lessons learned:

communities tend to be viscerally against trademarks

- culture: *"we're for Free Software, why restrict it?"*

  Integrity of The Author's Source Code
  *[. . .] license may require derived works to carry a different
  name [. . .] (This is a compromise. The Debian group encourages
  all authors not to restrict any files, source or binary, from being
  modified.)* — DFSG §4

- it's hard to explain the risks
  - good argument: infringements that go against community ethos

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Trademarks (cont.)

Combine that with the "feeling of restrictions" that most ™ policies give, and you obtain this:

> *Debian trademarks are valuable assets that we need to protect. We allow all businesses to make reasonable use of [them]. For example, if you make a CD of Debian, you can call that product Debian.*
>
> *If you want to use the name in some other way, you should ask us first. To be fair to all businesses, we insist that no one other than Debian uses Debian trademarks in the name of the business, organization or domain name.*
>
> — *Debian "trademark policy" 1.0, 1998–2012*

- note: the lack of "products" in the last provision
- interestingly enough, we didn't get into any real trouble

A Free Software-compatible trademark vision

"Trademark Freedom"[4]

1. principle: make trademarks as free as possible
   - obvious source of hackers↔lawyers tension

2. principle: make trademarks used as much as possible
   - rationale: hackers are into this to promote Free Software
   - e.g.: commercial merchandise w/ Debian trademark

- make day-to-day trademark activities sustainable
  - keeping up with violations/trolls is a major pain
- educate the community about trademark law

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[4]credits: Benjamin Mako Hill, Greg Pomerantz, 2008
http://wiki.mako.cc/TrademarkFreedom

Debian trademark policy 2.0

. . . and after several review rounds SFLC↔community:

> `http://www.debian.org/trademark#policy`
> — Debian trademark policy 2.0, Jan 2013

- an implementation of "trademark freedom"
- seems to have become quite popular already
  - inspiring for similar communities

We need more reference/template/education material at the intersection of trademark law and Free Software.

Related work

- http://modeltrademarkguidelines.org/ (Mar 2013) by Pam Chestek: great step forward for reusable material
- new Wikimedia ™ policy (Jan 2014): more restrictive, but great community-oriented presentation of ™ concepts
  https://meta.wikimedia.org/wiki/Trademark_policy

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Other community stories

only in Debian we have *also* had:

- US crypto exportation
- DMCA
- dealing with (US-)embargoed countries
- inbound trademark policy
  - ▸ trivia: *can recompilation invalidate nominative use?*
- trademark trolls
- copyright assignment (to non-profits, forthcoming)
- . . .

Other, different communities have surely seen more.
Ask them to tell their stories.

Hackers need Free Software lawyers.
And *vice-versa*.

Wish list

- more FOSS legal educational material (not only ©)
- more community-oriented "legal templates", wherever applicable
- more fiscal sponsors & SFLC-like organizations
  - high-quality *pro bono*, legal advice for communities
  - they should be sustainable

- less laws that punish community practices
  - mere knowledge, talking to your peers in public, ...
- less people (including lawyers) spreading FUD
  - as, unfortunately, it works
- less US-centrism

Laws, how we apply them, and how we communicate about them, all contribute to shape Free Software communities and their processes.

Thanks!
Questions?

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