Bringing back ethics to open source
First, a disclaimer.
...well, *two* actually.
1. [IANAL]: I am not a lawyer.
2. [WIP]: This is a work in progress.
I don’t have all the answers.
Goal: start a conversation.
So, what are we going to talk about?

1. A bit of context
2. A different perspective on the OSD
3. Let’s look at prior art
4. What’s missing from it?
5. Role of corporations
6. What do we get out of this?
7. Critiques
8. Next steps
9. Q&A
Context
So... what is this about?

- Increasing concerns about the negative impact of tech.
- Historical context of tech used at scale in Human Rights violations.
- A desire to do something about it through open source licensing.
- Previous attempts at doing so.
- Pushback from gatekeepers (that’s their role, so understandable).
OSI, OSD, 4 freedoms, etc.

- Open Source Initiative (OSI): a non-profit that is responsible for deciding which license is an open source license.
- Open Source Definition (OSD): a set of 10 criteria necessary for a license to be considered an open source license.
- 4 freedoms: The four criteria necessary for software to be considered free software (copyleft).
Desacralizing the OSD*

*OSD = Open Source Definition
Desacralizing the OSD*

- Created in a hurry over 20 yrs ago.
- Lifted from the Debian Free Software Guidelines.
- Never updated since.

*OSD = Open Source Definition
History

From time to time we revise this Free Software Definition. Here is the list of substantive changes, along with links to show exactly what was changed.

- **Version 1.165**: Clarify that arbitrary annoyances in the code do not negate freedom 0, and that freedoms 1 and 3 enable users to remove them.
- **Version 1.153**: Clarify that freedom to run the program means nothing stops you from making it run.
- **Version 1.141**: Clarify which code needs to be free.
- **Version 1.135**: Say each time that freedom 0 is the freedom to run the program as you wish.
- **Version 1.134**: Freedom 0 is not a matter of the program's functionality.
- **Version 1.131**: A free license may not require compliance with a nonfree license of another program.
- **Version 1.129**: State explicitly that choice of law and choice of forum specifications are allowed. (This was always our policy.)
- **Version 1.122**: An export control requirement is a real problem if the requirement is nontrivial; otherwise it is only a potential problem.
- **Version 1.118**: Clarification: the issue is limits on your right to modify, not on what modifications you have made. And modifications are not limited to “improvements”
- **Version 1.111**: Clarify 1.77 by saying that only retroactive restrictions are unacceptable. The copyright holders can always grant additional permission for use of the work by releasing the work in another way in parallel.
- **Version 1.105**: Reflect, in the brief statement of freedom 1, the point (already stated in version 1.80) that it includes really using your modified version for your computing.
- **Version 1.102**: Clarify that obfuscated code does not qualify as source code.
- **Version 1.101**: Clarify that freedom 3 means the right to distribute copies of your own modified or improved version, not a right to participate in someone else's development project.
- **Version 1.100**: Freedom 3 includes the right to release modified versions as free software.
We the People of the United States, in Order to form a more perfect Union, establish Justice, ensure domestic Tranquility, provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen by the People of the several States, and the Electors in each State shall have a equal Number of Representatives and Direct Taxes; but the number of Representatives shall not exceed that of the most numerous State, which shall have at the Time of the nextRevision of the Laws the largest Number of inhabitants. Each State shall have one Vote. A Representation shall be apportioned among the several States, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and when the right of alteration of the Representation shall, in the Provision for future Revision of the Laws, or any particular State shall, by the most numerous, be added, shall be increased accordingly. No State shall send less than two, nor more than six Representatives.

Section 3. The Senate of the United States shall consist of two Senators from each State, chosen by the Legislature thereof, for Six Years; and each State shall have one Vote. The Vice-President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The powers of Congress shall be exclusively vested in the Congress of the United States, which shall consist of a Senate and House of Representatives.
Desacralizing the OSD*

- Expression of the privilege of its authors.
- Ethical concerns would have been central had the OSD been written in less privileged circles.
- What if open source had succeeded in spite of the OSD and not because of it?
  ➢ Consider license adoption & who chooses software (hint: devs, not lawyers).

*OSD = Open Source Definition
(Some) Prior Art
(Some) Prior Art

- Douglas Crockford’s “Good, not Evil” license.
- The Hippocratic License by Coraline Ada Ehmke.
“Good, not Evil” License

- MIT license & “Good, not Evil” clause:
  
  “The Software shall be used for Good, not Evil.”

- Problem: leaves the definition of Good and Evil to interpretation.

- Crockford ended up putting JSON in the public domain instead.
The Hippocratic License

- Solves the problem of defining Evil by relying on the Human Rights.
- Doesn’t conflict with criteria 5 & 6 of the OSD by narrowing down limitation to actions (and not people, groups, or fields of endeavor).
- Problems:
  - Leaves the definition of human rights violation to the courts.
  - No strong adoption story.
What’s missing?
What’s missing

● Reliance on internationally recognized and respected body that defines actual violation of Human Rights.
● Community buy-in and multi-stakeholder support:
  ○ Maintainers
  ○ Actual open source projects
  ○ Nonprofits such as OSI, Apache Foundation, Linux Foundation, etc.
  ○ Corporations (OSPO, C-suite, Legal)
● Clear path from existing licenses to ethical ones
  ➢ Legal aspects, tooling, education, etc.
● A mindset shift to redefine the norm as respectful of Human Rights.
Fringe □ Norm
Corporations!?
Corporations!?

- Yes. If corps can’t use it, it’ll never have traction.
- Corporations often in Prisoner's Dilemma situation:
  - Would gladly stop infuriating their employees by dropping these small problematic contracts.
  - Problematic contracts often tied to orders of magnitude larger contracts they can’t afford to lose.
  - Provide an excuse to reject problematic contracts without risking the other ones.
What do we get out of this?
A moral compass for our industry
More concretely

1. Puts Human Rights at the heart of open source & software development.
3. Gives corporations an excuse to reject certain contracts.
4. Potentially reduces the pool of available software for Human Rights violations.
Critiques
Critiques

- Other/better way to address this.
- Risk of ethical license proliferation.
- Compliance nightmare.
- Not enforceable, so not worth it.
- In violation of OSD and/or 4 freedoms.
Next steps
Next steps

- This is a huge multi-year effort
  - Must be community-backed
  - Assess interest
  - Outreach
- Figure out where to lead it from
  - OSI?
  - New structure?
- Support? Volunteers? Funding?
Thank you.