Bringing back ethics

to

open source

FOSDEM '20

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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

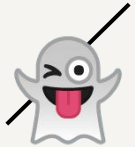
Context

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

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Desacralizing the OSD*

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

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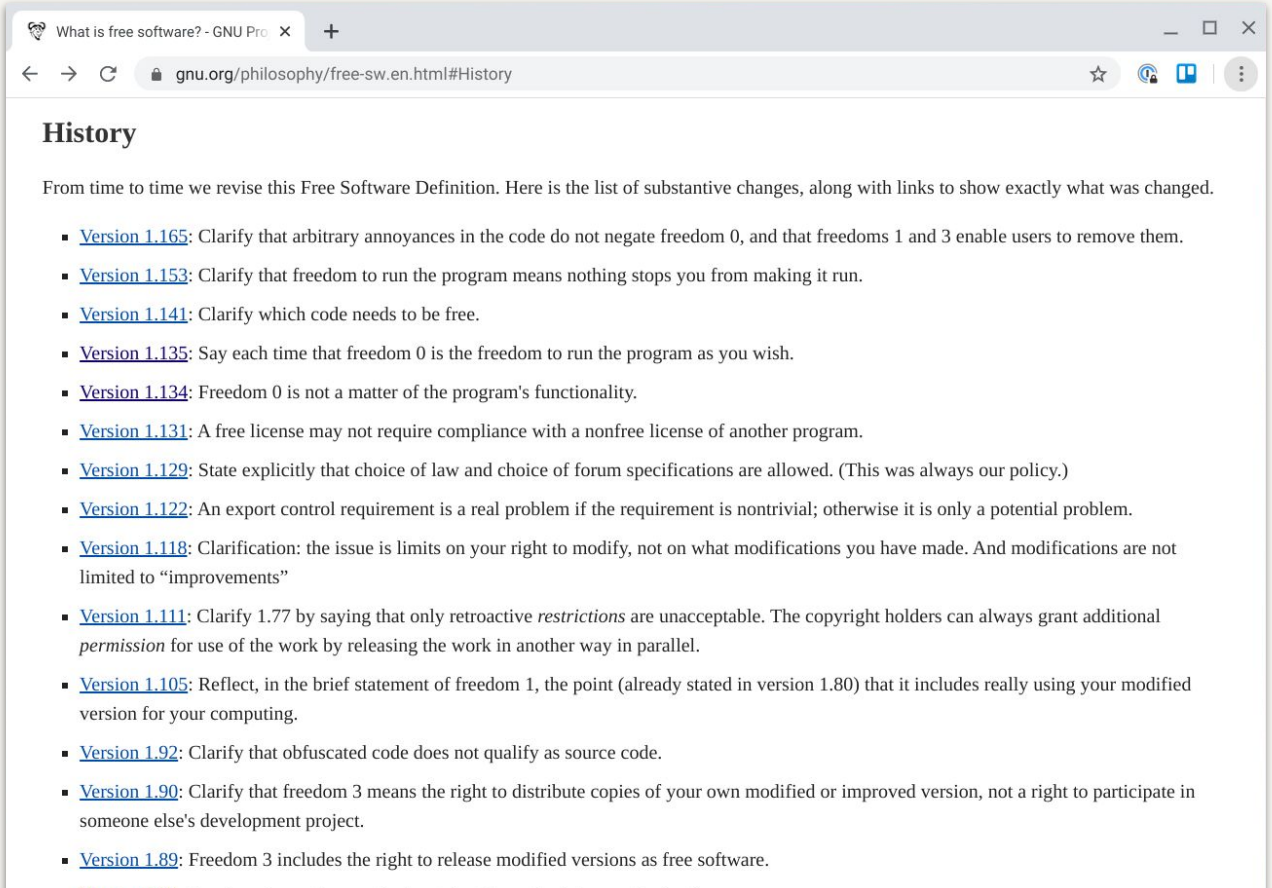

History

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 1.92: Clarify that obfuscated code does not qualify as source code.
- Version 1.90: 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 1.89: Freedom 3 includes the right to release modified versions as free software.

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We the People of the United States, in Order to form a more perfect Union, establish Justice, insure 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 every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, 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 until such Enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

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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

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(Some) Prior Art

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- Douglas Crockford's "Good, not Evil" license.
- The Hippocratic License by Coraline Ada Ehmke.

“Good, not Evil” License

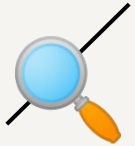
- MIT license & “Good, not Evil” clause:

  “The Software shall be used for Good, not Evil.”

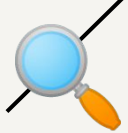
- Problem: leaves the definition of Good and Evil to interpretation.
- Crockford ended-up putting JSON in the public domain instead.

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.

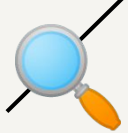


What's missing?



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.

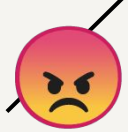
What do we get out of this?

A moral compass for our industry

More concretely

1. Puts Human Rights at the heart of open source & software development.
2. Human Rights-trained IP lawyers in corporations.
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.

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Q&A

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