The Dangers and Problems with GPLv3

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Abstract

This document is a position statement on the GNU General Public License version 3 (in its current Draft 2 form) and its surrounding process issued by some of the Maintainers of the Linux Kernel speaking purely in their role as kernel maintainers. In no regard should any opinion expressed herein be construed to represent the views of any entities employing or being associated with any of the authors.

1 Linux and GPLv2

Over the past decade, the Linux Operating System has shown itself to be far and away the most successful Open Source operating system in history. However, it certainly wasn't the first such open source operating system and neither is it currently the only such operating system. We believe that the pre-eminent success of Linux owes a great part to the dynamism and diversity of its community of contributors, and that one of the catalysts for creating and maintaining this community is the development contract as expressed by GPLv2.

Since GPLv2 has served us so well for so long, and since it is the foundation of our developer contract which has helped propel Linux to the successes it enjoys today, we are extremely reluctant to contemplate tampering with that licence except as bug fixes to correct exposed problems or updates counter imminent dangers. So far, in the whole history of GPLv2, including notable successes both injunctively and at trial, we have not found any bugs significant enough to warrant such corrections.

2 Linux, the Kernel and the Open Source Universe

Linux Distributions, as the Free Software Foundation (FSF) has often observed, don't only contain the kernel; they are composed of a distribution of

disparate open source components of which the kernel is only a part (albeit a significant and indispensable part) which collectively make up a useful and usable system. Thus, Linux as installed by the end user, is critically dependent on entities, known as distributions, who collect all of the necessary components together and deliver them in a tested, stable form. The vast proliferation of Open Source Licences complicates the job of these distributions and forces them to spend time checking and assessing the ramifications of combining software packages distributed under different (and often mutually incompatible) licences—indeed, sometimes licensing consideration will be sufficient to exclude a potential package from a distribution altogether.

In deference to the critical role of distributions, we regard reducing the Open Source licensing profusion as a primary objective. GPLv2 has played an important role in moving towards this objective by becoming the dominant Licence in the space today, making it possible to put together a Linux Distribution from entirely GPLv2 components and thus simplify the life of a distributor. Therefore, we believe that any update to GPLv2 must be so compelling as to cause all projects currently licensed under it to switch as expediently as possible and thus not fragment the currently unified GPLv2 licensed ecosystem.

3   Linux and Freedom

Another of the planks of Linux's success rests squarely on the breadth and diversity of its community of contributors and users, without whom we wouldn't have the steady stream of innovation which drives our movement forward. However, an essential element of this is the fact that individuals with disparate (and sometimes even competing) objectives can still march together a considerable distance to their mutual benefit. This synergy of effort, while not compromising dissimilar aims, is one of the reasons Linux manages to harness the efforts of not only motivated developers but also corporate and commercial interests. This in turn is brought about by a peculiar freedom enshrined in the developer contract as represented by GPLv2, namely the freedom from binding the end use of the project. Without this freedom, it would be much more difficult to satisfy the objectives of the contributors, since those objectives often have expression in terms of the end use to which they wish to put the particular project. Therefore, in order to maintain the essential development synergy and consequent innovation stream it provides to Linux, we could not countenance any change to the GPL which would jeopardise this fundamental freedom.

4   Pivotal Role of the Free Software Foundation

We have acknowledged before, projects controlled by the FSF (especially `gcc`, `binutils` and `glibc`) are essential components of every shipping Linux distribution. However, we also take note of the fact that the FSF operates very differently from Linux in that it requires assignment of copyright from each and every one of the thousands of contributors to its code base. These contributions have been given to the FSF not as a tribute to do with as it will but under a solemn trust, as stated in article 9 of GPLv2, only to licence the code under versions of the GPL that "... will be similar in spirit to the present version". We, like all the individual contributors to GNU projects, have taken that trust at face value and accorded the FSF a special role in the Open Source Universe because of it. It goes without saying that any updates to GPLv2 must be completely in accord with the execution of that trust.

5   GPLv3 and the Process to Date

The current version (Discussion Draft 2) of GPLv3 on first reading fails the necessity test of section 1 on the grounds that there's no substantial and identified problem with GPLv2 that it is trying to solve.

However, a deeper reading reveals several other problems with the current FSF draft:

5.1   DRM Clauses

Also referred to as the "Tivoisation" clauses.

While we find the use of DRM by media companies in their attempts to reach into user owned devices to control content deeply disturbing, our belief in the essential freedoms of section 3 forbids us from ever accepting any licence which contains end use restrictions. The existence of DRM abuse is no excuse for curtailing freedoms.

Further, the FSF's attempts at drafting and re-drafting these provisions have shown them to be a nasty minefield which keeps ensnaring innocent and beneficial uses of encryption and DRM technologies so, on such demonstrated pragmatic ground, these clauses are likewise dangerous and difficult to get right and should have no place in a well drafted update to GPLv2.

Finally, we recognise that defining what constitutes DRM abuse is essentially political in nature and as such, while we may argue forcefully for our political opinions, we may not suborn or coerce others to go along with

them. Therefore, attempting to write these type of restrictions into GPLv3 and then relicense all FSF code under it is tantamount to co-opting the work of all prior contributions into the service of the FSF's political ends, and thus represents a fundamental violation of the trust outlined in section 4.

5.2 Additional Restrictions Clause

As we stated in section 2 one of the serious issues in Open Source is too many licences. The additional restrictions section in the current draft makes GPLv3 a pick and choose soup of possible restrictions which is going to be a nightmare for our distributions to sort out legally and get right. Thus, it represents a significant and unacceptable retrograde step over GPLv2 and its no additional restrictions clause.

Further, the additional restrictions create the possibility of fragmentation of the licensing universes among particular chosen restrictions, which then become difficult to combine and distribute (because of the need for keeping track of the separate restrictions). Thus, we think this potential for fragmentation will completely eliminate the needed compulsion to move quickly to a new licence as outlined in section 2

5.3 Patents Provisions

As drafted, this currently looks like it would potentially jeopardise the entire patent portfolio of a company simply by the act of placing a GPLv3 licensed programme on their website. Since the Linux software ecosystem relies on these type of contributions from companies who have lawyers who will take the broadest possible interpretation when assessing liability, we find this clause unacceptable because of the chilling effect it will have on the necessary corporate input to our innovation stream.

Further, some companies who also act as current distributors of Linux have significant patent portfolios; thus this clause represents another barrier to their distributing Linux and as such is unacceptable under section 2 because of the critical reliance our ecosystem has on these distributions.

6 Conclusions

The three key objections noted in section 5 are individually and collectively sufficient reason for us to reject the current licence proposal. However, we also note that the current draft with each of the unacceptable provisions stripped out completely represents at best marginal value over the tested

and proven GPLv2. Therefore, as far as we are concerned (and insofar as we control subsystems of the kernel) we cannot foresee any drafts of GPLv3 coming out of the current drafting process that would prove acceptable to us as a licence to move the current Linux Kernel to.

Further, since the FSF is proposing to shift all of its projects to GPLv3 and apply pressure to every other GPL licensed project to move, we foresee the release of GPLv3 portends the Balkanisation of the entire Open Source Universe upon which we rely. This Balkanisation, which will be manifested by distributions being forced to fork various packages in order to get consistent licences, has the potential to inflict massive collateral damage upon our entire ecosystem and jeopardise the very utility and survival of Open Source. Since we can see nothing of sufficient value in the current drafts of the GPLv3 to justify this terrible cost, we can only assume the FSF is unaware of the current potential for disaster of the course on which is has embarked. Therefore, we implore the FSF to re-examine the consequences of its actions and to abandon the current GPLv3 process before it becomes too late.