

What should fit in a FOSS license?

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What terms belong in a free and open source software license? There has been a lot of debate about this lately, especially as many of us are interested in expanding the role we see that we play in terms of user freedom issues. I am amongst those people that believe that FOSS is a movement that's importance is best understood not on its own, but on the effects that it (or the lack of it) has on society. A couple of years ago, a friend and I recorded an episode about viewing software freedom within the realm of human rights; I still believe that, and strongly.

I also believe there are other critical issues that FOSS has a role to play in: diversity issues (both within our own movement and empowering people in their everyday lives) are one, environmental issues (the intersection of our movement with the right-to-repair movement is a good example) are another. I also agree that the trend towards "cloud computing" companies which can more or less entrap users in their services is a major concern, as are privacy concerns.

Given all the above, what should we do? What kinds of terms belong in FOSS licenses, especially given all our goals above?

First, I would like to say that I think that many people in the FOSS world, for good reason, spend a lot of time thinking about licenses. This is good, and impressive; few other communities have as much legal literacy distributed even amongst their non-lawyer population as ours. And there's no doubt that FOSS licenses play a critical role... let's acknowledge from the outset that a conventionally proprietary license has a damning effect on the agency of users.

However, I also believe that user freedom can only be achieved via a multi-layered approach. We cannot provide

privacy by merely adding privacy-requirements terms to a license, for instance; encryption is key to our success. I am also a supporter of code of conducts and believe they are important/effective (I know not everyone does; I don't care for this to be a CoC debate, thanks), but I believe that they've also been very effective and successful checked in as CODE-OF-CONDUCT.txt alongside the traditional COPYING.txt/LICENSE.txt. This is a good example of a multi-layered approach working, in my view.

So acknowledging that, which problems should we try to solve at which layers? Or, more importantly, which problems should we try to solve in FOSS licenses?

Here is my answer: the role of FOSS licenses is to undo the damage that copyright, patents, and related intellectual-restriction laws have done when applied to software. That is what should be in the scope of our licenses. There are other problems we need to solve too if we truly care about user freedom and human rights, but for those we will need to take a multi-layered approach.

To understand why this is, let's rewind time. What is the "original sin" that lead to the rise proprietary software, and thus the need to distinguish FOSS as a separate concept and entity? In my view, it's the decision to make software copyrightable... and then, adding similar "state-enforced intellectual restrictions" categories, such as patents or anti-jailbreaking or anti-reverse-engineering laws.

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[3] <http://dustycloud.org/blog/what-should-fit-in-a-foss-license/>