

Patents and Free Software

Stefano Zacchioli

Debian Developer
Former Debian Project Leader
OSI Board Director

31 October 2014
Software Freedom Law Center
10th Anniversary Conference
Columbia Law School
New York City, USA

About the speaker

- Debian Developer since 2001
- Debian Project Leader 2010–2013
 - dealt with legal issues on behalf of the project
- OSI Board Director

Community worries

Debian

- 21+ years of history, 1'000 volunteer developers
- 40'000+ FOSS packages, 12+ architectures
- leader, e.g., in the FOSS Web server market
- basis for 50% active FOSS distros (source: distrowatch)

Our patent worries:

- **patent trolls**, money-seeking lawsuits
- **anti-competitive warfare**
 - ▶ targeting non-profits
 - ▶ targeting individual developers
- **fear, uncertainty and doubt** (FUD) & bullying illusion of an easy encumbered/non-encumbered partition of FOSS
- **moral responsibility** towards our downstream

Community worries

Community worries

Debian

- 21+ years of history, 1'000 volunteer developers
- 40'000+ FOSS packages, 12+ architectures
- leader, e.g., in the FOSS Web server market
- basis for 50% active FOSS distros (source: distrowatch)

Our patent worries:

- ▶ ~~patent trolls~~, ~~money seeking lawsuits~~
- ▶ ~~anti-competitive warfare~~
 - targeting non-profits
 - targeting individual developers
- ~~fear, uncertainty and doubt (FUD) & bullying~~
illusion of an easy encumbered/non-encumbered partition of FOSS
- ~~moral responsibility~~ towards our downstream

1. (I hope) this room doesn't need convincing on why swpat are bad for freesw. I'll take that as given.
2. I'll focus on the *differences* in swpat risks&solutions for volunteer freesw communities vs companies
3. Debian: largest curated FOSS distros, "everything you need"
4. Debian: "rock upon which" multi-billion FOSS businesses are built
5. trolls: we do not have "interesting" money
6. targeting individuals: we lack the usual employee safe nets. Our devs are on the front line
7. FUD: consumes a lot of community energy, encouraging public discussions that increase dangers for individual developers
8. FUD: might give *de facto* veto power to the patent owners that should be the most
9. Responsibility: we make no promises on patents, but still feel responsible. Trade-off between this and resisting FUD is hard.

What helps, what doesn't

- anti-troll legislation
- scope-limiting case law (Bilski, Alice, ...)
- defensive patent pools, e.g., OIN: [partially]
[partially]
 - ▶ past ethical/vision divergences
 - ▶ too small: OIN Linux System \subset Debian
 - ▶ too small: are all potential enemies licensees?
- educational material for developers
 - ▶ together w/ SFLC we contributed some,¹ we need much more
- strong community protection organizations, e.g.:
 - ▶ FOSS-oriented non-profit fiscal sponsors
 - ▶ high-quality, *pro bono*, legal advice — à la SFLC

¹Community Distribution Patent Policy FAQ, www.debian.org/reports/patent-faq

└─What helps, what doesn't

What helps, what doesn't	
• anti-troll legislation	
• scope-limiting case law (Bliski, Alice, ...)	[partially]
• defensive patent pools , e.g., OIN: <ul style="list-style-type: none"> • past ethical/vision divergences • too small: OIN Linux System ≠ Debian • too small: are all potential enemies licensees? 	[partially]
• educational material for developers <ul style="list-style-type: none"> • together w/ SFLC we contributed some,¹ we need much more 	
• strong community protection organizations , e.g.: <ul style="list-style-type: none"> • FOSS-oriented non-profit fiscal sponsors • high-quality, <i>pro bono</i>, legal advice — à la SFLC 	

¹Community Distribution Patent Policy FAQ, www.debian.org/report/patent-faq

1. anti-troll: pointless for communities, we're not targets
2. case law: we are big enough to evade any scope
3. OIN used to publicly advertise swpat benefits; now fixed
4. OIN too small: would help more if it covered all of Debian (hint hint)
5. OIN too small: might be fixable in the long run
6. edu: to target FUD and plain under-/mis-information among devs
7. fiscal sponsors: they should have swpat competences; having several of them around the world helps reducing risks
8. legal advice: lack of money is not the main issue here; strong ethical alignment on freesw values is

“the only winning move is ~~not to play~~” ... to ban the game

Thanks!

Stefano Zacchioli
zack@debian.org

<http://epsilon.cc/zack>

<http://identi.ca/zack>

about the slides:

available at <https://gitorious.org/zacchiro/talks/trees/master/2014/20141031-sflc-swpat>
copyright © 2014 Stefano Zacchioli
license CC BY-SA 4.0 — Creative Commons Attribution-ShareAlike 4.0

Thanks!

Stefano Zacchiroli
zack@debian.org
<http://epsilon.cc/zack>
<http://identi.ca/zack>

about the slide:
available at <http://git.debian.org/?q=intro/patches/zacchiroli/patches/patches/2014/20141031-01-to-ban>
copyright © 2014 Stefano Zacchiroli
licensed CC BY-SA 4.0 - Creative Commons Attribution-ShareAlike 4.0

1. To conclude: the only change that *would really* help, is for [free] software and patents to go separate ways. Anything else is just a palliative.