CS305 - Social, Ethical, and Legal Implications of Computing

Law and Ethics of Open Source
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The US Legal Framework

- Two sources of law: Congress, Courts

- Two kinds of law: Criminal, Civil

- Trials

- Right to appeal; grounds for appeal

Legal Framework for IP

- Four basic kinds of protection
  - Copyright
  - Patent
  - Trademark
  - Trade Secret
- Many goals for this framework

IP: Ethical and Social Issues

- What goals are served by current IP law? Consider categories of IP that are currently not protected…

  - When does IP protection inhibit creation? When does it encourage it?

  - From what ethical framework does a "creator's right" to control "his/her" IP flow? Is it universal?

  - What price is society willing to pay to "protect" IP? Is it technical? Social?

"Open" IP

- Movement for collective creation

- Typically focused around copyright, source code

- Idea: License away individual rights

- Two flavors:

  - Vanilla ala Creative Commons, Open Source

  - "Viral" ala GPL

Stallman's "Four Freedoms"

- 0. Freedom to run the program as you wish.

- 1. Freedom to study the source code of the program and then change it so the program does what you wish.

- 2. Freedom to help your neighbour. That's the freedom to redistribute the exact copies of the software when you wish.

- 3. Freedom to contribute to your community. That's the freedom to distribute copies or modified versions when you wish.

Discussion: *The Right To Read*

- Horribly written story (read like it was written by Holt on *Brooklyn 99*), but…

- How much of the framework from this 1997 story is already here?

- How much of it is coming soon?

- Is this…*OK?*

- If not, what to do about it?

Ethics of the Four Freedoms

- From what ethical framework do these freedoms flow?

- Are they stated in a way that biases the ethical case?

  - Robin Hood

  - Bitcoin

- Do they reflect a different understanding of "property"?

The GPL as a Legal Hack

- Ethics of hacking (at) laws?

  - Sets bad precedent (c.f. kernel headers); encourages litigation (c.f. Busybox)

  - Can be risky (courts/lawmakers can wreak havoc with the framework)

- Following vs setting community norms

  - c.f. Bill Gates's Letter

Open Source and litigation: *Jacobsen v. Katzer*

- Katzer / KAM Train Tools 1997

- 1998 Katzer files patents for client-server train SW

- 2000 Jacobsen starts JMRI under Artistic License

- 2002 JMRI adds client-server capabilities

- Jan. 2004 Jacobsen / JMRI files DecoderPro TM

- Feb. 2004 Katzer gets *decoderpro.com* domain

- 2005 Katzer files patent case against JMRI

- 2006 Jacobsen files to invalidate Katzer patents

- 2007 WIPO gives JMRI *decoderpro.com*

Jacobsen v. Katzer cont.

- 2006 Jacobsen C&D's Katzer, claims damages
- 2007 Jacobsen amends with DMCA claims
- 2007 Court denies suit: license violation v. cpyr infringement
- 2008 Appeals Court sends case back to trial
- Feb. 2009 Katzer abandons patent claims
- Feb. 2009 Katzer, responds, counterclaims copyright
- Dec. 2009 Judge rules
- Feb. 2010 Parties settle (see Wikipedia)

Jacobsen v. Katzer: Discussion

- Classic example of real legal interaction:

  - Two parties who hate each other a bit too much

  - Lots of legal interactions

  - Over a long period of time

- Who was "in the right"? Is it obvious?

- What could be done to avoid it next time? Done by who?

Last Questions

- Does the legal framework we have set up for SW IP serve society well? What about open source in particular?

- Is there a commonly accepted standard of IP ethics? If so, is it appropriate? If not, is this a problem?

- Is it your responsibility as a computer scientist / software developer to address this stuff?

Bonus Slides

Copyright

- Covers an expression of a creative work

- Everything since about 1930

- Currently obtained by...creating

- Gives right to

    - Reproduce

    - Prepare derivative works

    - Distribute copies

    - Perform, Display

- Enforced by civil suit (mostly)

(Utility) Patents

- Covers a novel, useful idea

- Last 20 years

- Application process through USPTO

- Right to "practice" idea

- Enforced by civil suit

Trademarks

- Covers a distinguishing mark

- Last as long as in trade use

- Application through USPTO

- Right to use mark (c.f. Lanham Act)

- Enforced by civil suit

Too-brief history of UNIX

- A new kind of OS from AT&T

- UC Berkeley and BSD

- BSD entirely frees UNIX (c.f. SysV)

- MINIX, etc

- Early Linux

- Commercial Linux adoption

- Mega-GPL

Linux kernel

- OS kernel vs utilities

  - "GNU/Linux"

- Kernel interfaces, headers

- Kernel community

  - Consensus feedback both to and from

  - Conflicting goals

  - Open…but

  - The Benevolent Dictator

Trade Secrets

- Covers a "secret" (probably even if otherwise not protectable)

- Created by not disclosing

- Last as long as the secret stays secret

- Right to prevent employees etc from disclosing the secret

- Enforced by civil suit (mostly)

Commercial vs Free

- The Free Rider problem (?)

- Commercial tech economy is incredibly valuable (IP is biggest US export)

- Where should the bar be set?