

# FLOSSing for Good Legal Hygiene: Stories from the Trenches

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*FOSDEM, February 2012*

“Those who cannot remember the past are condemned to repeat it. In the first stage of life the mind is frivolous and easily distracted; it misses progress by failing in consecutiveness and persistence. This is the condition of children and barbarians, in whom instinct has learned nothing from experience. In a second stage men are docile to events, plastic to new habits and suggestions, yet able to graft them on original instincts, which they thus bring to fuller satisfaction. This is the plane of manhood and true progress. Last comes a stage when retentiveness is exhausted and all that happens is at once forgotten; a vain, because unpractical, repetition of the past takes the place of plasticity and fertile readaptation. In a moving world readaptation is the price of longevity. The hard shell, far from protecting the vital principle, condemns it to die down slowly and be gradually chilled; **immortality in such a case must have been secured earlier, by giving birth to a generation plastic to the contemporary world and able to retain its lessons.**”

– George Santayana, *The Life of Reason*  
Vol. 1, “Reason in Common Sense”  
1905

# A Brief History of FLOSS

- 1973, Paris Peace Accords, driven by unprecedented anti-war protests (major victory for free culture movement)
- 1975, Vietnam War ends
- 1976, EMACS released by Richard Stallman, Guy Steele, Dave Moon (written in TECO and PDP 10 assembly)
- 1978, Berkeley Software Distribution (BSD) released by Bill Joy

1970's

# A Brief History of FLOSS

- 1982, James Gosling rewrites Emacs in C
- 1983, GNU Project launched
- 1984, X project begins
- 1985 (May), GNU Emacs launched, derived from Gosling's Emacs
- 1985 (Jul), Stallman removes Gosling's code, UniPress claims distribution rights
- 1985 (Oct), Free Software Foundation formed

1980's

“In the summer of that year, about two years ago now, a friend of mine told me that because of his work in early development of Gosling Emacs, he had permission from Gosling in a message he had been sent to distribute his version of that. Gosling originally had set up his Emacs and distributed it free and gotten many people to help develop it, under the expectation based on Gosling's own words in his own manual that he was going to follow the same spirit that I started with the original Emacs. Then he stabbed everyone in the back by putting copyrights on it, making people promise not to redistribute it and then selling it to a software-house.”

– Richard Stallman, 30 Oct 1986  
Royal Institute of Technology  
Stockholm, Sweden

1980's

# A Brief History of FLOSS

- 1986, MIT license released (for X10R3)
- 1987, Perl released as “non-commercial”
- 1988, BSD license released (with advertising clause)
- 1988, BISON General Public License, Emacs General Public License
- 1989, Nethack General Public License

1980's

# A Brief History of FLOSS

- 1989, GNU General Public License 1.0 released
- 1989, Perl adopts GPL 1.0
- 1989, US adopts Berne Convention

1980's

“The copyleft used by the GNU project is made from a combination of a copyright notice and the GNU General Public License. The copyright notice is the usual kind. The General Public License is a copying license which basically says that you have the freedoms we want you to have and that you can't take these freedoms away from anyone else. (The actual document consists of **several pages of rather complicated legalbol that our lawyer said we needed.**) A copy of the complete license is included in all GNU source code distributions and many manuals, and we will send you a printed copy on request.”

– “What is Copyleft?”, GNU's Bulletin  
June 1988 (Vol 1, No 5)

1980's



# A Brief History of FLOSS

- 1991, Artistic License 1.0 released (Perl 4.0 dual-licensed with GPL 1.0)
- 1991, Linux Kernel released (“non-commercial” then GPL 1.0)
- 1993, Debian Project launched
- 1995, The Apache Group begins developing HTTP Server
- 1995, Apache License 1.0 released

1990's

# A Brief History of FLOSS

- 1996, KDE project started
- 1997, “The Cathedral and the Bazaar” by Eric Raymond
- 1997, SPI formed
- 1997, KDE e.V. formed
- 1997, Sun sues Microsoft for incomplete Java implementation
- 1998, GNOME project started

# A Brief History of FLOSS

- 1998, Netscape Communicator released (Netscape Public License)
- 1998, Christine Peterson coins the term “open source”
- 1998, Open Source Initiative formed
- 1999, The Apache Foundation formed
- 1999, SPI granted 501(c)(3) status

# A Brief History of FLOSS

- 2000, Apache License 1.1 released
- 2000, The Perl Foundation formed (as “Yet Another Society”)
- 2000, GNOME Foundation formed
- 2001, Python Software Foundation formed
- 2002, Perl project removes code claimed by developer's employer

2000's

# A Brief History of FLOSS

- 2003, Open Source Initiative granted 501(c)(3) status
- 2003, Mozilla Foundation formed
- 2003, SCO v. IBM filed
- 2004, Apache License 2.0 released
- 2004, Apache adopts CLA
- 2004, Linux Kernel adopts Certificate of Origin

2000's

# A Brief History of FLOSS

- 2004, Perl rewrite?
- 2005, meeting to discuss Artistic License 2.0, Perl trademark, CLA
- 2005, FLOSS Foundations formed
- 2006, Artistic License 2.0 released
- 2006, Python Software Foundation granted 501(c)(3) status
- 2006, GPL 3.0 review process started

2000's

# A Brief History of FLOSS

- 2006, Jacobsen v. Katzer filed
- 2007, GPL 3.0 released
- 2007, “not copyright infringement”
- 2007, amicus brief by Creative Commons, Linux Foundation, Open Source Initiative, Perl Foundation, Wikimedia Foundation
- 2008, Artistic License is “enforceable copyright conditions”

2000's

# A Brief History of FLOSS

- 2010, SCO v. Novell verdict
- 2010, Jacobsen v. Katzer settled
- 2010, Harmony drafting process started
- 2011, CouchDB git controversy

2010's



It is my belief that we are, right now, in the middle of a very large evolution in the ecology of open source. The language of contribution has infected a new generation of open source contributors. Much of the potential first imagined by open source pioneers is being realized by high school kids on a daily basis who contribute effectively with less effort than has ever been required.

The reason I am so convinced of the importance of this change is so simple it took me nearly a year to identify it. While the ethos of Apache may have been "Community over Code" it required those in the community to understand and internalize that ethos for it to be fully realized. Social problems became political problems because the ethos had to be enforced by the institution.

The new era, the "GitHub Era", requires no such internalization of ethos. People and their contributions are as transparent as we can imagine and the direct connection of these people to each other turn social problems back in to social problems rather than political problems. The barrier to getting a contribution somewhere meaningful has become entirely social, in other words it is now the responsibility of the community, whether that community is 2 or 2000 people.

– Mikeal Rogers, "Apache Considered Harmful"  
November 22, 2011

NOTES

# A Brief History of FLOSS

- 2011, CouchDB founders fork project to VC funded startup Couchbase
- 2011, Harmony 1.0 contributor agreement templates released
- 2012, Mozilla Public License 2.0 released

2010's

# License

- More than legal text
- Philosophy
- Culture
- Business model
- Alternatives: copyleft, permissive, attribution, patents
- Benefits: provide clear terms to your users

# Provenance

- Where does the code come from?
- Do you have permission to distribute it?
- Are you sure?
- Can you prove it?
- Alternatives: commit tracking, certificate of origin, contributor agreement, license, assignment
- Benefits: information ready if you ever need it

# Foundation

- Optional
- Estimate one full-time human-year for setup
- Alternatives: conservancy, no entity
- Benefits: liability, IP management, handling funds (donations, events, swag, infrastructure)

# Summary

- Remember where we came from
- Legal limelight is rare, but happens
- Set a good example
- Pave the way for future projects