# Legal issues from a radical community angle

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# Outline

1. Legal fundamentals of Debian

2. Some legal issues from Debian trenches

3. Looking forward

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# Debian at a glance

## Distribution

1993 founded by Ian A Murdock

today
- server market lead
- huge archive ($\approx$30'000 pkgs), 12 architectures
- base for half of the active Free Software distros

## Project

### Social Contract (excerpt) (1997)

1. 100% Free Software
3. don't hide problems
5. works that do not meet our Free Software standards

$\approx$ 1'000 members world-wide + 4–5'000 contributors, volunteers

# Fundamental #1 — DFSG

To verify the *"100% Free"* promise, you need to define "Free".
The Debian Free Software Guidelines (DFSG) give such a definition.

```
http://www.debian.org/social_contract#guidelines
```

- require the 4 freedoms to uphold
- + distribution specific provisions
- basis for the Open Source Definition
- apply to all sorts of content
  - firmware, documentation, artwork, music, . . .

# Fundamental #2 — Governance

## Constitution (1998)
Structures and rules of a Free Software-compatible democracy

on paper: pretty formal
- bodies: DPL, delegates, technical committee, secretary, . . .
- procedures: NM process, general resolutions, . . .

in practice: flat, bottom-up, almost anarchic
- teams (100x), maintainers (1'000x)
- all (almost entirely) autonomous in technical decisions

# Fundamental #3 — Independence

none (or very little) corporate control over Debian

- no (single) company babysitting us
- living up on: donations, gift-economy
- truly remarkable among "major" distros

drawback: limited access to typical corporate resources

assets (money, hw, IP) held by trusted organizations world-wide

- e.g.: SPI (US), FFIS (Germany), debian.ch, . . .
- to reduce SPOF risk

# Some consequences

At different scales, these traits apply to most "community-driven FOSS projects".

Some consequences:

- top-down *"thou shalt not. . . "* → doesn't work
- limited access to legal advice
- some US-centrism

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# Copyright

Main © concerns for a FOSS distro:

- keep Debian (main) 100% Free Software                    (mission)
- keep Debian archive legally (re-)distributable           (legal)
- ~~copyright assignment~~

how to do © verification in an almost anarchic way?

## Lesson learned

You don't.

Delegating verification to individual maintainers doesn't work at this scale.

*not all hackers are equally attentive when it comes to legal matters*

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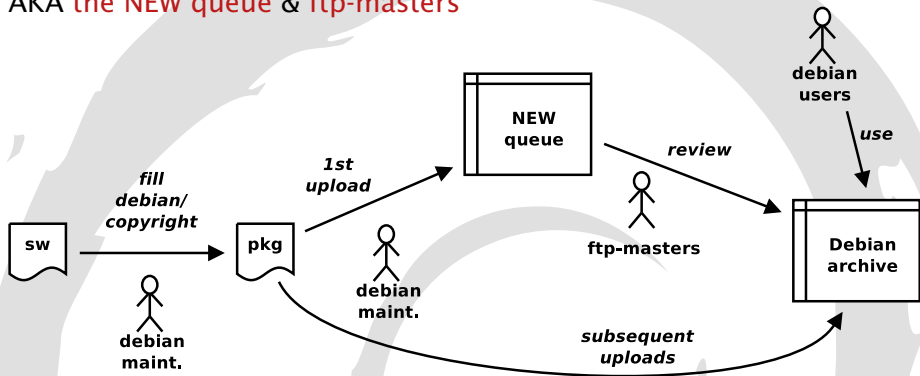how to do © verification in an almost anarchic way?

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# Package qualification

AKA the NEW queue & ftp-masters



- 2 tier review process
- main purpose: check DFSG free-ness

# Quality assurance on debian/copyright

At Debian scale, (semi-)automated QA on license information is desirable, e.g.:

- do we link OpenSSL w/ GPL (by mistake)?
- how much GPLv3-incompatible packages we have? (2007)
- . . .

## Idea

Heuristics to cross-check `(Build-)Depends` w/ licensing information → find candidates for further review.

Requirement: machine readable debian/copyright

# Machine-readable debian/copyright

2007 early versions
2012 version 1.0

http://www.debian.org/doc/packaging-manuals/
copyright-format/1.0/

```
Format: http://www.debian.org/doc/packaging-manuals/copyright-format/1.0/
Upstream-Name: X Solitaire
Source: ftp://ftp.example.com/pub/games

Files: *
Copyright: Copyright 1998 John Doe <jdoe@example.com>
License: GPL-2+
 This program is free software; you can redistribute it and/or modify it under the terms of the
 GNU General Public License as published by the Free Software Foundation; [snip]
 .
 On Debian systems, the full text of the GNU General Public License version 2 can be found
 in the file '/usr/share/common-licenses/GPL-2'.

Files: complex-1/*
Copyright: Copyright 1998 Jane Smith <jsmith@example.net>
License: GPL-2+ with OpenSSL exception
 [LICENSE TEXT]

Files: complex-2/*
Copyright: Copyright 1998 Jane Smith <jsmith@example.net>
License: GPL-2+ or Artistic-2.0, and BSD
 [LICENSE TEXT]
```

# Machine-readable debian/copyright (cont.)

- potential: huge corpus of (reviewed) licensing statements for popular Free Software
- archive coverage: 44% — ≈8'000 source packages[1]

- relationship with SPDX

| SPDX | debian/copyright |
|------|------------------|
| extensional | intensional |
| machine readable | human readable too |

  ▸ prototype bidirectional converters available

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[1] credits: Dafydd Harries and his work on http://directory.fsf.org/, March 2013

# Patents

Like all large software assemblies, the Debian archive is a patent minefield. (What isn't?)

- as everybody does, we did some risk assessment[2]

Lessons learned:

1. hysteria, FUD has won
   - communities tend to avoid (only) the usual suspects
   - black-or-white approach to an inherently blurry matter
   - false sense of security

   this has led to the debian-multimedia fork

2. "thou shalt not speak about..." doesn't work
   - recurrent public threads: *patents spotted, remove $pkg!*

_____
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# Patents (cont.)

We need training material and reusable policies on patents.

- community (non-company) oriented
- not only US-centric

We discussed our needs with SFLC to produce some of it:

*Community Distribution Patent Policy FAQ*
http://www.debian.org/reports/patent-faq

*Debian Position on Software Patents*
http://www.debian.org/legal/patent

> [...] *patent concerns expressed publicly may turn out to be unfounded but create a good deal of fear, uncertainty, and doubt in the meantime [...] please refrain from posting patent concerns publicly or discussing patents outside of communication with legal counsel, where they are subject to attorney-client privilege.*

We need (a lot) more.

# Trademarks

As many projects we own a number of trademarks

- "Debian"®, ™

Lessons learned:

communities tend to be viscerally against trademarks

culture: *"we're for Free Software, why restrict it?"*

*Integrity of The Author's Source Code*
*[...] license may require derived works to carry a different name [...] (This is a compromise. The Debian group encourages all authors not to restrict any files, source or binary, from being modified.)* — DFSG §4

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# Trademarks (cont.)

Combine that with the "feeling of restrictions" that most ™ policies give, and you obtain this:

> *Debian trademarks are valuable assets that we need to protect. We allow all businesses to make reasonable use of [them]. For example, if you make a CD of Debian, you can call that product Debian.*
>
> *If you want to use the name in some other way, you should ask us first. To be fair to all businesses, we insist that no one other than Debian uses Debian trademarks in the name of the business, organization or domain name.*
>
> — *Debian "trademark policy" 1.0, 1998–2012*

- note: the lack of "products" in the last provision
- interestingly enough, we didn't get into any real trouble

# A Free Software-compatible trademark vision

"Trademark Freedom"[3]

1. principle: make trademarks as free as possible
   - obvious source of hackers↔lawyers tension

2. principle: make trademarks used as much as possible
   - rationale: hackers are into this to promote Free Software
   - e.g.: commercial merchandise w/ Debian trademark

- make day-to-day ™ activities sustainable
  - keeping up with violations/trolls is a major pain
- educate the community about trademark law

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[3]credits: Benjamin Mako Hill, Greg Pomerantz,
http://wiki.mako.cc/TrademarkFreedom, 2008

# Debian trademark policy 2.0

. . . and after various rounds of reviews lawyers↔community:[4]

> `http://www.debian.org/trademark#policy`
> — Debian trademark policy 2.0, January 2013

- an implementation of "trademark freedom"
- seems to have become quite popular already
  - inspiring for similar communities

We need more reference/template/education material at the intersection of trademark law and Free Software.

- `http://modeltrademarkguidelines.org/` by Pam Chestek (March 2013) is a great step forward

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[4]thanks to SFLC for their help, again!

# Outline

# Other community stories

only in Debian we have *also* had:

- US crypto exportation
- DMCA
- dealing with (US-)embargoed countries
- inbound trademark policy
  - trivia: *can recompilation invalidate nominative use?*
- trademark trolls
- . . .

Other, different communities have surely seen more.
Ask them to tell their stories.

We need each other.

# Wish list

- more FOSS legal educational material (not only ©)
- more community-oriented "legal templates", wherever applicable
- more fiscal sponsors & organizations following SFLC model
  - high-quality *pro bono*, legal advice for communities
  - it should be sustainable

- less laws that punish community practices
  - knowing, talking to peers, . . .
- less people (including lawyers) spreading FUD
  - as, unfortunately, it works
- less US-centrism
  - an FTF-like model more open to communities?

Laws, how we apply them, and how we communicate about them, all contribute to shape Free Software communities and their processes.

# Thanks!
# Questions?

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http://upsilon.cc/zack
http://identi.ca/zack