

GPLv3 and Debian

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1 Introduction

For the remainder of the year, we have an opportunity to participate in a historic process that affects a large part of the software in Debian, as well as the greater Free Software community. During this calendar year, the FSF is working on drafting a revision of the GNU Public License, and you all are an important part of that process. The current draft has changed many things, and it's quite likely that the subsequent drafts will contain more changes that affect the way that works under the GPLv3 are able to be used.

We will attempt in this paper to discuss the process behind the adoption of a GPLv3, that is, how changes to the current draft are going to be suggested, commented upon, stewarded, and made, the changes and the rationale behind the changes that have been made in the current draft of the GPLv3 and the GPLv2, and finally a non-exhaustive look at some of the major issues which have been identified with the current draft.

2 Drafting and Community Review Process

The drafting and review process has three important components which are going to interact together to result in subsequent drafts and eventually the final revision of the GPL version 3. These three components are the community at large, four committees made up of community members, and Richard M. Stallman (with the assistance of Eben Moglen and others at the SFLC.)

2.1 Community

The Free Software community (that includes you if you're reading this) is responsible for reviewing the various drafts of the GPL and making comments about the changes that have been made to the GPL (or even comments about things that haven't been changed, but possibly should have been.) The comments are made currently using a web based application at gplv3.fsf.org, and at the time I'm writing this a few thousand comments have been made. (In fact, almost no substantive portion of the license has not been commented upon.)

Hopefully, the community will be able to identify most of the serious issues with each of the revisions of the license, and begin to identify ways that the license can be changed (if necessary) or at the very least identify areas that need change or clarification. Since the community includes not only Free Software developers like yourselves, but attorneys who are either developers or users in their own right spread throughout many of the legal systems on the planet, it's quite likely that at least the obvious issues will be discovered and fixed. (Ideally by the sheer application of many eyeballs even the less obvious issues will be noticed and addressed.)

2.2 Committee

Five committees, four of which were organized at the first GPLv3 conference at MIT in January have been formed. Branden Robinson, Greg Pomerantz, Mako Hill, and Don Armstrong are project members who are also on these committees. Each of the committees was free to organize itself as it wished, although representatives from the FSF acted as guides throughout the process to keep the committees on track and on task.

The committee's primary responsibility is to examine the comments that are made by the community, group the comments into issues, and then make recommendations based upon the comments to resolve the issues that have been raised. For example, members of Committee D have been examining all of the comments that have been made on the GPL and assigning them to different categories based on personal assessment. Groups that are made by each member are then brought forward at the weekly meetings in IRC (`#committeed` on

irc.freenode.net at 22:00 UTC on Tuesday) and if the members agree, are made issues, and someone volunteers to steward the issue.

Once an issue is identified, discussion on the issue occurs in committee, and if necessary, more comments/suggestions are made in the commenting system which are included. If changes are required to the GPL to resolve the issue, those changes are also made and discussed. Finally, assuming the members of the committee agree, a final position paper can be made, and the committee can submit the issue for consideration by RMS.

2.3 RMS

Richard M. Stallman is serving as the final arbitrator of changes that are made to the GPL. The committees will be presenting cases for any changes that need to be made to the license, and RMS will be weighing them, and making a final determination on them. RMS will of course be working in close concert with the FSF's legal representation, so Eben Moglen and the SFLC will also play a role in this part of the process.

In the course of the next year, RMS will be involved in publishing two to three drafts of the GPL, culminating at the end of the calendar year in a new version of the GPL, one that the Free Software community in general is content with and willing to license its works under.

3 Overview of the Current Draft

The current draft of the GPLv3 changes quite a few things from version 2. We'll discuss some of the more obvious changes here and retread the FSF's rationale for each of the changes that we discuss. We will withhold discussion of the issues that these changes have raised (and other pre-existing issues) for section 4.

3.1 Digital Restrictions Management

The current draft of the GPLv3 includes a clause (§1 ¶2) which resolves a possible loophole with the GPL version 2, whereby a distributor could distribute the source code to a program, but restrict the ability of anyone else to make modifications to the program by the means of cryptographic keys or similar to either lock the hardware, or block interoperability between programs. Additionally, it was possible to restrict the output of a work to being unlocked using a specific set of keys (or a specific vetted viewer which was closed source.) This clause requires that these keys be provided as part of the Complete Corresponding Source Code .

In addition to specifically requiring certain keys, the current draft of the GPLv3 indicates that the license should be interpreted in a manner that disallows attempts to restrict users' freedom. (§3 ¶1) This clause also disallows the distribution of “covered works that illegally invade users' privacy”¹

The current draft also indicates (§3 ¶2) that covered works do not constitute part of an effective technological protection method in an attempt to obviate DMCA protection for GPLed works.

3.2 License Compatibility

A whole set of clauses were added to the current draft of the GPLv3 to attempt to increase the compatibility between the GPL and other free software licenses. The first three of these clauses primarily deals with explicit compatibility with BSD-like licenses (§7 ¶4–6); as the GPL has long been considered to be compatible with the 3-clause BSD,² this just makes the compatibility explicit.

The next clause (§7 ¶7) makes the current draft of the GPLv3 compatible with the Affero Public License. In other words, it allows the license to require “functioning facilities that allow users to immediately obtain copies of its Complete Corresponding Source Code.”

The final clause in this section allows for compatibility with licenses that impose a limited set of patent retaliation terms. (§7 ¶8) Briefly, it allows licenses to revoke permission for use of added parts wholly or partially upon the initiation of a software patent lawsuit, so long as the lawsuit is not retaliating against another software patent lawsuit and the lawsuit specifically targets part of the covered work.

3.3 Patent Licensing

Software patents are, unfortunately, a serious problem that we people in many jurisdictions have been forced to deal with. The current draft of the GPLv3 deals with this in a few ways; first the traditional automatic licensing of downstream users survives, with the explicit allowal of patent retaliation restrictions, in all activities allowed by the license, including modified versions of the work. Secondly, the current draft of the GPLv3 requires that patent holders who are immune from suits under patent because they have a patent license must act to shield downstream users against possible patent infringement claims which their patent license protects them. (§11 ¶2)

¹We'll discuss the problems with this particular clause in greater deal in section 4.1 on page 5

²That is to say the BSD license which does not have the advertising clause

4 Open Issues with the Current Draft

4.1 Digital Restrictions Management

The current wording of the sections on Digital Restrictions Management has caused a bit of consternation in many camps, including Linus Torvald's rather tepid reception of v3. First and foremost, it appears that the GPLv3 as written requires distributors to provide the keys used to sign a work, just like we do in Debian in order to help users assure that the code that they are installing is actually the code that we have distributed to them. There are ways to interpret the language as written to not require this, but they are not as straightforward as one would like. Additionally, it appears to require that API keys which are used to uniquely identify the user of a work for billing or bandwidth/resource limitation purposes be provided along with the work. These were most likely not intended, and are merely an artifact of the very complex nature of trying to preserve user's freedom, while granting them the ability to do everything that they wish to do.

Secondly, the current clauses on DRM as written disallow the illegal invasion of user's privacy. This appears to have been included as a response to the Sony DRM debacle, and a desire to be able to go after people who illegally violate others privacy with a larger stick than the criminal laws in various jurisdictions currently afford. Unfortunately, restricting users from performing specific sets of actions almost definitely contravenes DFSG §6³ and more importantly, it doesn't do anything to solve the more serious problem of invasion of user's privacy where it is the government itself that is doing the invasion. Hopefully this clause, while well meaning, will be removed from the second draft of the GPLv3.

A final issue with this section comes from the anti-DMCA clause of the current draft of the GPLv3 (§3 ¶2). This clause has caused a bit of confusion in various people not familiar with the DMCA and the provisions provided for within. Additionally, it's not clear whether the clause will actually be able to keep a covered work from activating that clause of the DMCA, as very little case law exists in this area. Of course, at worst case, this clause will just become a confusing null-op, in the optimal case it may actually do some good.

4.2 Affero Clause

A more contentious clause is in §7d, the Affero compatibility clause. Briefly, the Affero compatibility clause is an attempt to close the ASP loophole; the ASP loophole being the ability of application service providers to use a GPLed work and make modifications to it without providing the source code to the modifications to their users and/or the community in general.

³“The license must not restrict anyone from making use of the program in a specific field of endeavor.”

The clause does this by implementing a restriction on modification by requiring the work to maintain a facility to allow users to immediately download the complete corresponding source code to the work. Ostensibly, such a restriction on modification fails the most expansive readings of DFSG §3; and likewise has problems with Freedom Zero, the freedom to study a program and make modifications to it for any purpose. It also causes problems where a bug in this mechanism could place you in violation of the license, and precludes using code with this restriction in areas where the immediate download of Complete Corresponding Source Code is impossible.

That being said, the use of ASPs to lock users out of being able to modify their own software is a serious problem that we are going to have to resolve in one way or another, either through software licensing like this, or by users not accepting that computing model.

4.3 Patents

Software patents are, as those of you have been following the machinations of the EU in this issue know, the night stalker of the entire software world. Basically, if you're not a big player with a few thousand software patents, or an entity whose entire purpose is to litigate patents and not actually make software you're going to be affected by software patents some day. Already there is software in Debian which is likely DFSG free, but we are not able to distribute because of the likelihood of becoming the subject of patent lawsuits. In an attempt to combat this, the GPL has always had a clause which caused patent licenses to flow from the licensee to the licensor. The addition of the patent shield now forces larger companies with diverse patent portfolios and cross licensing agreements to act to shield downstream users from the possibility of patent lawsuits when their licensing agreements protect them.

4.4 GPL as Free Software

A long time issue is the fact that the GPL itself cannot be modified. The reasons behind disallowing this modification typically boil down to a desire to restrict license proliferation. However, given the interpretation by the FSF that the only part of the license that must be removed from the license if the license is modified is the preamble, it seems that any license proliferation prohibition has been virtually eliminated.

Given the sheer number of people who are working on the GPLv3 and the number of issues that have been raised, it seems that no one should take writing a software license or modifying an existing one lightly. In that light, the lack of modifiability to the GPL has not been altogether too important.

However, it seems reasonable that we should apply the same philosophy to as many of the works as possible that we, as members of the Free Software community, create. Not

that someone should modify the GPL, but just so we are philosophically consistent when we request others to join our community.

5 Conclusion

We're now 5 months into the process to draft the GPLv3; that means we've got less than 7 months left to suggest any changes to the new version of the draft that we can. If you haven't yet, you should take some time and read over the current draft of the GPLv3 , and make sure that it protects the freedoms that you feel are important to have as a member of the Free Software Community. Don't take our word for what the changes, problems, and rationale are for the current draft of the GPLv3 ; think about them, and comment on them too!