The current and future legal framework :

A Threat to Free Software and Computer Science

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Agenda

- General Principles around Freedom
  - from non-physical objects to the four freedoms of Free Software
- Freedom : an important note
- Legal Framework
  - The paradoxical situation (protect/remove Freedom)
- Circumvention of copyright protection systems
- Imposing the use of copyright protection systems
  - Issues
- Cybercrime law
- Software patents
- Activism
- Free Software developers
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General Principles (general overview) 1/2

François-RenØ Rideau

- "The Laws of Human Beings must not contradict that which Nature renders impossible to contradict"
- The exclusion principle of physical objects
  - (you can't have at different places the same car)
- The non-exclusion principle of non-physical objects
  - (you can share cooking recipe without damaging somebody)
- You can kill a human being but not an idea...

Bernard Lang

- Ecology of Ideas
- "...des idØes, des concepts, et des objets immatØriels qui, pour se dØ velopper, s'enrichir et s'Øpanouir, ont besoin de circuler, de s'associer,

General Principles (general overview) 2/2

John Perry Barlow (EFF) - 1996 (CDA reaction)

- A Declaration of the Independence of Cyberspace
- "Your legal concepts of property, expression, identity, movement, and context do not apply to us. They are all based on matter, and there is no matter here."

Richard Stallman (FSF)

- Four Freedoms of Free Software
  - 0. The freedom to run the program, for any purpose.
  - 1. The freedom to study how the program works, and adapt it to your needs.
  - 2. The freedom to redistribute copies so you can help your neighbor.
  - 3. The freedom to improve the program, and release your improvements to the public, so that the whole community benefits.

Freedom : an important notes

- Freedom is an ethical issue
- Freedom is not a legal issue
- Freedom is here without legislation
- Disclaimer :
- But after we'll talk about Freedom and legislation because legislation is hurting Freedom

Legal framework 1/2

- The balance of a legal framework that protects Freedom and a legal framework that removes Freedom.
- Or The paradox of the legal blob.

Legal framework that can be used to "protect" Freedom :

- The use of the Copyright (for example The GNU General Public License)
  - Berne Convention (1971 version)
  - WIPO Copyright Treaty
- The European Directive allows reverse engineering for interoperability (similar law in Japan)
- Europe : Munich Convention (article 52c)

Legal framework 2/2

- Legal framework that is used to remove Freedom :
  - WIPO Copyright Treaty / Berne Convention (1971 version)
    - (author->editor, expression of idea ->idea)
  - WIPO Copyright Treaty (1996 version)
    - Article 11 (--> local law : DMCA / EUCD)
    - Article 12 (--> DRM)
  - Software Patents (in US / Japan)
  - International Cybercrime Treaty
    --> local law : Cybercrime law.
  - DRM law (proposal directive)
  - Data retention (european directive proposal 351/133)

Circumvention of copyright protection systems

- WIPO Copyright Treaty (1996 version)
- Article 11
- Obligations concerning Technological Measures
- Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.

- This creates that :
- (US) DMCA (Digital Millenium Copyright Act)
  - Multiple cases : bnetd, DeCSS, Elcomsoft
- (EUROPE) EUCD (European Copyright Directive) (2001/29/CE)
  - Application in the national law for November 2002
  - Conflicting with the Directive regarding the reverse engineering for interoperability
- (fair use issue, computer science research, cryptography, ...)

Imposing the use of copyright protection systems

- SSSCA Security System Standards and Certification Act proposal
  - -> CBDTPA Consumer Broadband and Digital Television Promotion Act
- A work in-progress exists on a proposal Directive for Europe on imposing DRM
- This type of law would require equipment manufacturers to embed government-approved copy protection systems into all computer equipment.

Issues on imposing the use of copyright protection systems

- Access to education
  - The right to read (Richard Stallman, 1996)
  - Universal Declaration of Human Rights (article 27) :
    - Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits
- Reverse engineering
  - More difficult on a technical side (?)
  - Entrance price for RE will be higher
- Life of information
  - Open Format and long-time preservation of information (archive)
- Privacy
  - How is it working for my privacy ?

Cybercrime law

- International Cybercrime Treaty has been signed on 23 november. (Council of Europe, US, Canada, Japan ...)
  - 1. It includes a list of crimes that each member country must have on its books.
  - 2. It requires each participating nation to grant new powers of search and seizure to its law enforcement authorities
  - 3. It requires law enforcement in every participating country to assist police from other participating countries by cooperating
  - A proposal European directive (COM2002 173final)
    - Reverse engineering issue
    - Extending circumvention of copyright protection systems
    - Terms usage

Software patents

- Software patents are forbidden in Europe (following the Munich Convention)
- Software patents are legal in the US (and in Japan)
- European Patent Office (EPO) is trying to pass software patents with some tricks
  - (like """"effect""""" in computer program)
  - (IBM case)
- A proposal Directive in favor of Sofware Patents in EU
  - check http://petition.eurolinux.org/

    - Implementing idea -> the idea itself (cf. algorithm, method...)
    - Viscosity of research (danger for the innovation)
    - Reuse in Software Engineering impossible (with Software Patents)
    - Free Software License (""RAND"" / RF case)
    - Monopoly

Activism

- Create/use/modify/distribute Free Software
- Promote privacy
- Promote anonymity
- Promote Open Standards and Free of access Standards
- Join / Help / make a donation to an association (FSF, EFF, FSF Europe,...)
- Boycott and talk about products including DRM
- Use correct terms (from GNU/Linux to not use "Intellectual Property"...)
- Promote Free use of Cryptography
- Local activities are important (from LUG to universities/schools)

Free Software developers

- How to react regarding legal issue ? (just an overview of possible method - idea)
  - DC (Don’t care) method.
  - Media method. (used by PGP for the crypto export issue, DeCSS gallery)
  - Trying to be compliant with the legal framework (quite difficult, RF & Patents for example)
  - Legal method. (time and money)
  - Mix method.
  - ...

Conclusion ?

- Freedom is an ethical issue
- Long terms plan are difficult or impossible
- Day to day activism to promote the ethical value of Freedom

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  - http://www.ffii.org/index.en.html

if(Question) {HopetoFindanAnswer();}

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- GPG Fingerprint : 3B12 DCC2 82FA 2931 2F5B 709A 09E2 CD49 44E6 CBCD

"...Les barriŁres de «propriØtØ intellectuelle» valent bien les barriŁres douaniŁres...", Bastiat 1850.

"the responsibility of a citizen is to keep his mouth open." - Gunther Grass

Fun with a message