

freebsd-current: Re: groff alternative?

Re: groff alternative?

Source: <http://unix.derkeiler.com/Mailing-Lists/FreeBSD/current/2005-06/0939.html>

From: Paul Allen (pallen_at_donut.ugcs.caltech.edu)

Date: 06/18/05

Date: Fri, 17 Jun 2005 15:13:13 -0700

To: Chuck Swiger <cswiger@mac.com>

(reply-to set to freebsd-chat, this discussion doesn't belong on -current)

Well I am not here to give you legal advice, as I am not a lawyer. Luckily, rational people are free to discuss their views on the law purely for the sake of discussion.

So I have to say I disagree with your conclusions based on the context of your sources.

See:

http://www.law.qut.edu.au/files/open_source_book.pdf

for lots of information.

There are two problems, one is whether the license can hold. In the BSD case this is essentially irrelevant. If the license is nullified because a jurisdiction enforces a punitive rule that any improper terms nullify the entire license, the result is to return the code to the BSD state.

Thus, the BSD license is essentially a tautology whereas the GPL is not and this is a significant problem for people who want to impose its totalitarian view of the meaning of free.

Now let us discuss the disclaimers. It is true that Australian law has certain supposedly undisclaimable implied warranties. See sections 66 to 74 of the "Trade Practices Act" of 1974

Now section 68A of the TPA permits the liability to be restricted to the "cost of resupply" which is of course zero in the case of free software distributed over the internet.

As you do not seem to be aware, let me tell you that it is not a point of settled law in Australia that software as

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mere information as one would download over the internet is even actually a good in trade under the law.

To phrase this generally, when "distributing" things over the internet, you never distribute the information yourself. You merely distribute a right to people to access your computer system in a restricted fashion. They do so and in the process "take" information from you.

At no point have you established the existence of a good in trade. If you and phk sit in a bar and he reads aloud the text of /usr/src and you write it down, no "good" has been distributed.

Finally, most of the analysis on this subject is VERY GPL centric. The trouble with the GPL is that actually attempts to bind the user.

The BSD license reads:

- 1) this code is released into the public domain
- 2) this code may not be taken out of the public domain (vacuous duplication of #1)
- 3) during redistribution you may not conceal that this code is in the public domain (vacuous duplication of #2)
- 4) I declare my opinion that I am not offering something which induces liability on myself. (vacuous duplication of #1)

The same cannot be said of the GPL.

You should mull-over how it is that FreeBSD is placed in the public domain but it is completely nonsensical for a good to be placed in the public domain.

As for people distributing CDs of FreeBSD you can reasonably argue that their obligation is to supply a readable and correct image of the FreeBSD information--which is what they claim to provide.

Oh. And if you haven't figured it out yet, lawyers are in the business of inventing liability and possible liability. THAT IS HOW THEY MAKE MONEY. If you don't want to be suffocated by such lawyers its best to speak loudly and with a clear voice as to how you read the law.

-Paul

>From Chuck Swiger <cswiger@mac.com>, Fri, Jun 17, 2005 at 05:16:02PM -0400:
> Paul Allen wrote:
> >On Fri, 17 Jun 2005, Chuck Swiger wrote:

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> >> *You should know that being involved in a lawsuit generally has nothing to*
> >> *do*
> >> *with the actual merits of the situation, it takes nothing more than one*
> >> *party*
> >> *being unreasonable and looking for anything they can think of to make*
> >> *claims.*
> >> *For someone in the EU-- or Australia, or a lot of places, apparently--*
> >> *that could be something as simple as the "DISCLAIMER" section of the BSD*
> >> *license, since those jurisdictions do not permit liability to be*
> >> *completely disclaimed.*
> >
> > *I beg your pardon? I highly doubt that there is a jurisdiction on the*
> > *planet that supports the principle of one-sided contracts.*
>
> *The BSD license isn't a contract, Paul: it's not phrased as one and it*
> *doesn't have what the legal types call a "proffer".*
>
> > *The DISCLAIMER gains its power precisely because you did not pay for the*
> > *work being disclaimed and you voluntarily made use of that work. This is*
> > *distinguished say from the necessity of good-samaritan laws which apply*
> > *when people give aid without compensation to individuals who are not in a*
> > *state in which they may consent.*
>
> *Yeah, yeah, I know. I don't even disagree, but I've got news for you:*
> *the law doesn't always make sense.*
>
> > *Please provide case citations with such speculation in the future. A good*
> > *engineer knows that many things can go wrong, but he worries only about*
> > *those things he feels are likely.*
>
> *Go read HIPPA or European contract law (cf German "Cecil" section 315,*
> *apparently). I'm not qualified to give legal advice; go pay for an*
> *attorney. But here are two comments from people who are:*
>
> *From: "Lawrence Rosen" <lrosen@rosenlaw.com>*
> *To: "'Donnal Walter'" <donnaalcwalter@yahoo.com>,*
> *<license-discuss@opensource.org>*
> *Subject: RE: open source medical software*
> *Message-ID: <20050127143025.GA15353@mail26c.sbc-webhosting.com>*
> *[...]*
>
> *Software distributors must obey the law regardless of what an open source*
> *license says. So if you must obtain FDA approval before you can distribute*
> *certain software intended for patient care, the license doesn't override*
> *that requirement. You may be required by law to perform certain tests or*
> *peer review before distributing the software; a mere license won't let you*
> *avoid that.*
>
> *However, the open source license you use cannot *require* licensees to*
> *obtain FDA approval or get peer review. The only thing you can do is remind*
> *licensees of *their* duty to obey the law as they understand the law.*

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>
> *This is similar to the issue of export regulations. As a distributor of*
> *software in the United States, you are required by law to obey US export*
> *regulations. But you can't impose that requirement on your customers who*
> *live and work in other countries. It is up to them to obey the law as they*
> *understand that law. So OSI has never accepted a license that expressly*
> *requires licensees to obey specific US export law.*
>
> *Your open source license cannot impose specific restrictions on how to copy,*
> *modify or redistribute the work, or restrict such activities to certain*
> *professionals.*
>
> *As for whether you must include a warranty, that too is often a subject of*
> *legal regulation. A disclaimer of warranty or limitation of liability in an*
> *open source license may not be enforceable in some jurisdictions and for*
> *some forms of injury.*
>
> *In these cases, you and your customers should probably consult an attorney*
> *specializing in the requirements of the FDA and other government agencies.*
>
> -----
>
> *From: "Axel Metzger" <metzger@mpipriv-hh.mpg.de>*
> *To: <license-discuss@opensource.org>*
> *Subject: AW: For Approval: German Free Software License*
> *Message-ID:*
> *<84D511A814FAF742BF6927D883CF67C177BECC@mpg-hap-info.mpipriv-hh.mpg.de>*
>
> *Hi Chuck,*
>
> *thanks for your comments. I will try to address your critical remarks.*
>
> *Chuck Swiger wrote:*
> *[...]*
> *>>>Distribution: The public passing on of material copies to third*
> *>>>parties, in particular, onto storage devices or in connection with*
> *>>>hardware.*
>
> *> One is also redistributing the software if you pass the software on in*
> *> private, say to your relative or to another member of your company.*
>
> *> I believe your intent is to enable people to change the software for their*
> *> private use without making their changes public, but require the source*
> *> code to be made available when public redistribution, so it would be*
> *helpful*
> *> to clarify these terms a bit.*
>
> *Here once again, we followed the wording of German and European Copyright*
> *law. Do you have a realistic idea how many problems of interpretation*
> *European lawyers have with the US-based licenses? This is one of the major*
> *reasons why the Ministry wanted to have a more "European" license.*

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>
> >>> *Section 7 Liability and Warranty*
> >>> *(1) The Entitled Persons are only liable for conflicting third-party*
> >>> *rights if they were aware of such rights without informing you.*
> >>>
> >>> *(2) Liability for errors and/or other defects in the Program shall*
> >>> *be governed by agreements concluded between you and the Entitled*
> >>> *Person beyond the scope of this License or, if no such agreement*
> >>> *exists, by the pertinent statutory provisions.*
> >
> > *If I modify a program covered by the GFSL, and I want to redistribute my*
> > *version without any warranty (ie, the standard DISCLAIMER found in the BSD*
> > *and other licenses which disclaims liability since the software is being*
> > *made*
> > *available free of charge), may I do so?*
>
> *No, under German and European contract law it is impossible to exclude any*
> *warranty and liability. The consequences are not to severe – as long as you*
> *redistribute the program without charging a fee. Under the German Civil Code*
> *you are only liable if you knew that the program has defects etc.*
>
> > *Can a project like FreeBSD, NetBSD, etc, or a Linux distro like Debian,*
> > *Redhat, etc, adopt GFSL code without conflict with their existing*
> > *disclaimers?*
>
> *The disclaimers are invalid under German and European contract law. Sorry,*
> *they are legally inexistent in Europe.*
>
> [...]
>
> --
> -Chuck

--

freebsd-current@freebsd.org mailing list

<http://lists.freebsd.org/mailman/listinfo/freebsd-current>

To unsubscribe, send any mail to "freebsd-current-unsubscribe@freebsd.org"