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Research Paper Title:
Trade Mark and Free/Open Source

Introduction:

- paradox that it is hidden under FOSS Communities projects:

- ideologically opposed to traditional Intellectual Property rights which generally guarantee a legal monopoly to their owners.

- Whereas, for "Communities" is the opposite, because their main peculiarity is the accessibility of the software to anybody to use and modify, its source code that is made available to all the members of that Community and what is more, anyone can reuse and improve upon works of other members.

Introduction:

- Hence, for the formerly said reasons, it is undeniable that there is some tension between Trade Mark law, which can be and actually is used to limit the distribution of software and the freedom that is the heart of FOSS principles.

Definition and brief legal background on FOSS Systems:

- The Free Software's definition was authored by R. Stallman and is more normative in nature ;

- Whereas, the Open Source Software was authored by B. Perens and is more descriptive in nature.

Definition and brief legal background on FOSS Systems:

- Free Software always considers four substantive freedoms:

- 1) The freedom to run the program for any purpose;
- 2) The freedom to study how the program works and adapt it to your needs;
- 3) The freedom to redistribute copies so you can help your neighbor;
- 4) The freedom to improve the program and release your improvements to the public, so the whole Community benefits

Definition and brief legal background on FOSS Systems:

- Whereas, Open Source software has a broader definition and it involves:

- 1) Free distribution;
- 2) Source code available to everyone;
- 3) Derivative works permitted;
- 4) Integrity of the author's source;
- 5) No discrimination against persons or groups;
- 6) No discrimination against fields or endeavor;
- 7) Distribution of license with derivative works;
- 8) License must not restrict use of other software;
- 9) No provision of license may be predicated or any individual technology or style of interface.

Definition and brief legal background on FOSS Systems:

- So, basically we can say that the there're slightly differences between these two concepts;

- Furthermore, we need to find their main difference in the emphasis on the ethical perspective, that isn't a peculiarity of OS projects.

crucial distinction between Source Code and Executable code:

- A) The former is the human-readable form of a computer program, typically written in high-level language like C++, Java or Perl.
- B) The executable code is the program that computers actually runs and in order to obtain this code from the source is necessary the work of a Compiler.

Evolution of FOSS:

- 1 era) computer operating systems and internet were developed in academic setting such as Berkeley an MIT and reflecting the spirit of academic freedom;

- 2 era) is led by Richard Stallman and his GNU project. His foundation sought to develop and disseminate a wide variety of software without cost;

- 3 era) era is characterized by the dramatic acceleration of open source activity (e.g. Linux of Linus Torvalds, 1991).

Interaction and suitability of FOSS Systems with Traditional TM law:

- The "source code", the language in which software programs are written, is made available for others to review and improve upon, in contrast to the typical practice of proprietary software companies which protect their source code as trade secret.

- Therefore, while on one hand, open source licenses allow anyone to modify software, on the other hand, no TM owner can allow use of its mark on that software without controlling the nature of the resulting products.

Interaction and suitability of FOSS Systems with Traditional TM law:

- the ownership of their TMs:

- generally joint ownership of TMs is disfavored since the notion of multiple independent owners is inconsistent with TM's role in indicating a single origin for a good or service and a single entity to provide consistent quality.

Interaction and suitability of FOSS Systems with Traditional TM law:

- Thus, to avoid this problem usually are adopted solutions as:

- 1) creating a Community member Steward;

- 2) creating an umbrella organizational Steward- because Collaborative Communities may not have an organizational or formalized center that is capable of holding TMs' registration, so these Communities may turn to an umbrella steward to fill this role.

- 3) creating internal organizational steward, which are specialized non-profit organization, which usually play a role in the Community's governance, finances, and assets including TMs.

Main risks for FOSS:

- 1) Risk of genericide: because of their characteristics of freely access and easy capacity of improvement of the "product", the capability of a Community's TM to incur into the risk of genericide is very high;

- 2) Naked licensing: Naked license is licensing a trademark without the necessary controls over the use of the mark.

Another Problem:

- The protection of the TM for a Community acquires, often, another meaning, because it also involves the protection of the values shared by members of a given Community and their reputation, so it's even more important.

- Also protection for the public;

Intersection between FOSS's licensing and contractual law:

- FOSS projects, generally, don't follow the standard models, and trademark's licensing requirements

- Main characteristic of licenses: usually, FOSS are direct licensing models;

- most open source licenses contain few or no terms regarding governing law, venue, integration and severability, many times their licenses contain broad warranty disclaimers and limitations of liability.

Intersection between FOSS's licensing and contractual law:

- substantive distinction existing between hereditary software licenses and permissive software licenses;

- most widely used license by Open Source Communities is GPL;

- The GPL has a famous "special" exception that allows other proprietary code to be combined into the source executable file .

Intersection between FOSS's licensing and contractual law:

- Then, there were some attempts to capture the basic software licensing paradigm of the GPL, but in a license drafted in conventional legal language :

- E.g. Mozilla Public License→ which was drafted in connection with the licensing of Netscope's browser, which was made on open source project in 2002 and become the basis of the Open Source Firefox browser .

The End

THANK YOU
FOR YOUR ATTENTION!!

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