

Free Software Matters: When Code Isn't Law

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Most of my time is spent writing and teaching about law for the Internet society, or proposing and helping to implement legal strategy for the free software movement. As a Linux user, you know that free software, because of the way it's made, achieves levels of quality that proprietary software rarely meets, and delivers reliable cutting-edge technology at a price every individual user and small business can afford. But from where I sit, free software is also central to the biggest legal and political issues that the global Internet society will face in the next twenty-five years.

We often discuss "the Internet" as though it were either a thing or a place, but we do better at grasping the legal and political issues the net presents if we think of "the Internet" as the name of a social condition: the fact that everyone living in the networked portions of the world can now communicate with anyone else directly, without intermediaries, reaching very large numbers of people at almost no cost. A society in which everyone is connected to everyone else behaves differently from any society that has ever existed before; past "principles" of social and economic law, things that seemed always true everywhere, aren't anymore.

Free software—like the Linux kernel, GNU Emacs, L^AT_EX, Apache, Perl, and all the other tools you use all the time—exists because in this pervasively interconnected society, non-traditional means of production can be amazingly efficient. Large numbers of programmers can collaborate easily on enormous projects without having to be locked into a hierarchical organization. Everyone can participate in finding and fixing bugs and everyone can readily incorporate all the fixes, so the quality of free software

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can be much higher than that of programs produced by a limited number of developers and testers inside a commercial proprietary manufacturer.

At first glance, free software seems to pose a problem mostly for commercial proprietary software firms. And it is a problem for them: they're going to have to learn to compete against excellent products that everyone can copy, use, improve and redistribute at no cost. But there are more serious forms of confrontation ahead.

Instead of thinking of the net as a place called "cyberspace," think of it for a moment as a collection of pipes and switches. Information flows through all the different kinds of pipes, and is modified or sent to particular destinations by the switches. The switches determine who gets what information, how privately or publicly, and what—if anything—users downstream from the switch have to pay to receive the information. For you, the most important switch of all is the one closest to your eyeball and eardrum. It shows you the text and video you ask for, plays your music, carries your voice calls and video conferences, and so on.

But there are other people too who want to control the switches nearest you. They want to be able to deliver music or movies, for example, that you have to pay for each time you listen or watch. Copyright law protects them already, by making it illegal for you to copy music or movies and give those copies to other people. But in the world of the net, where copies cost nothing and move everywhere instantly, the distributors of proprietary media think that legal protection is not enough. They want to be sure that your computer *can't* make copies of the music they've just delivered you over the net. In the phrase of Professor Larry Lessig of Harvard, they want code to substitute for law.

In the world of proprietary software, the user doesn't control the switch he himself owns: the software manufacturer does. If Microsoft makes the Windows Media player so that there's no way to save streaming audio on the hard drive, it's almost impossible for the user to unmake that decision.

But free software is code that any user can change, and therefore it can't be used to substitute for law. And because free software often replaces proprietary software, it can act subversively, to undo "laws" made by proprietary programs. Free software browsers can remove the ads from web pages, a free software DVD player can let you fast-forward through commercials. Any free software media player could be modified to save the music or video it is playing. "Who controls the switches?" That's the most important legal and political question in the Internet society. Free software says that, as individuals, we do. So sometimes "code is law" and sometimes code is freedom. Which makes for many complex legal issues, a few

already raised in the courts and many more that we'll see in the next year or two, as free software finds itself at the center of conflict over the politics of the Net. [In future issues of this magazine I'll be writing more about these cases, and about why Free Software Matters.]