Contribution Policies for FOSS Projects

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Background

- Inbound vs. outbound project legal activity
- Multi-developer projects have implicit/explicit contribution policies, but most do not use contributor agreements (assent-requiring instruments)
Categories of policies

- Majority rule: "inbound=outbound"
- Maximalist contributor agreements: copyright assignment, CLAs (most common minority approach)
- Other approaches
Inbound = outbound

- Contributions understood to be licensed in under project outbound license (less commonly, project passes through explicit inbound license)
- Customary; reflects traditional FOSS norms (licensor equality, transactional informality)
- Pure FOSS; usually undocumented
Copyright assignment and CLAs

- "Maximalist" → extent of power transfer to project/entity, risk allocation to contributor, departure from FOSS custom

- No inherent outbound licensing constraint (some add real/nominal commitment)

- Non-reciprocal patent license grant by contributor

- Provisions shifting risk to contributor

- Extreme cases: *designed* to deter contribution
Assignment vs. CLA

- Assignment: formal ownership transfer, sometimes with fallback maximal copyright license, + grant-back maximal copyright license covering *patch*

- Cultural hostility to assignment; CLAs probably more common now

- Some critics of assignment assume CLAs don't raise similar issues; others assume CLAs are copyright assignments
Other approaches

- Agreement or documented policy formalizing inbound=outbound
- Agreement or documented policy specifying noncopyleft FOSS inbound
- Give contributors a choice
- Lightweight exception to maximalist agreements for small contributions
Problems of maximalism

- Suggests FOSS licensing is inadequate
- Kills legal equality & transactional informality $\rightarrow$ inhibits community-building
- Ethical problems
Inequality and transactional formality

- Inbound=outbound legal equality attenuates natural inequalities in community projects
- Rights allocation imbalance preserves single-entity control, signals others are second-class citizens
- Red tape, delay, inefficiency, friction, negotiation costs (reduces significant advantage of community development)
Barriers to contribution inhibit community-building

- Narrower development community limits project focus → limits user community → limits developer community further
- Increases incentives to fork → wasteful work on both sides, reducing benefits of community development
Ethical concerns

- Arises with individual contributor and corporate inbound: inequality in bargaining power, legal sophistication

- CLAs more ethically problematic than © assignment
Arguments for maximalism

- Business-related (attract investment, convince companies to "open source")
- Enforcement (specific to © assignment)
- Facilitate relicensing
- "Protect the project"
Copyright assignment and enforcement

• Standing (nonexclusive licensee can't sue for infringement, but can acquire copyright on derivative/collective works)

• Related: aggregate ownership needed to enforce (disproven, but germ of truth)

• Avoid joinder of contributors (assumes contributor and contribuee had joint ownership of whole, but then grantback license would preserve joinder problem)
Relicensing

- Today relevant only where: initial license copyleft + does not allow migration to desired license
- FOSS licensing should be stable: projects should get license policy right the first time and use "or later" licensing
- "Nuclear option" without community consent suggests weak/nonexistent community
- "Non-automatic" relicensing is typically not very difficult
Protect the project from contributor/3rd party claims

- Assumes high *contribution* risk without empirical justification
- Inbound=outbound + FOSS license sufficient protection for project community
- Nominal contract claims against judgment-proof developers
Recent developments: mixed picture

- Project Harmony (2010-2011)
- Increasing interest in DCO
- Apache-style CLAs continue to be used by 'corporate' projects and increasingly by 'community' projects
Thank you

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