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 → 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 contributee *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