

From: [REDACTED]
To: [FN-OMB-IntellectualProperty](#)
Subject: FSF Comments on Joint Strategic Plan
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March 24, 2010

Victoria Espinel
Intellectual Property Enforcement Coordinator
Office of Management and Budget
Executive Office of the President
Filed via email

Re: Comments on the Joint Strategic Plan

Dear Ms. Espinel:

I am writing on behalf of the Free Software Foundation (FSF), a registered 501(c)3 nonprofit organization based in Boston, Massachusetts, with comments for the Joint Strategic Plan. The FSF believes that everyone should be allowed to share and change the software that they use[1], and that people are harmed when they are prohibited from doing so. When software is licensed under terms that permit such modification and redistribution, we call that software free software. We provide technical and informational resources to developers who are releasing free software. We also hold the copyright for more than 200 such programs.

The FSF believes that the Joint Strategic Plan should not envision baroque schemes to help enforce overbearing proprietary software licenses, but instead should advocate the adoption of free software at all levels of government and industry. This strategy would provide the government with full control over its own software and offer maximum transparency and freedom to its constituents, while simultaneously reducing the demand to provide structures for copyright and license enforcement.

Our suggestions here are focused on software copyrights and the licenses that typically accompany them. We want to be clear on this point, since the term "intellectual property" lumps together very different areas of law, and encourages people to assume similarities between them where none exist.

I. Government Benefits from Free Software Adoption

All free software users benefit from the right to modify that software and distribute it to others. In the context of government, however, those rights take on special significance: they make it possible to serve the people in this digital age in ways that cannot be matched by proprietary software.

President Obama made transparency of the government a staple of his election campaign, promising to make it easier for people to understand the decisions that elected and appointed officials make on our behalf. Using free software would provide government agencies with numerous opportunities to make good on that promise. Free software generally favors free data formats and standards, to provide both developers and users with as many opportunities as possible to

access the data and interoperate with other software. Releasing data in these formats is well-recognized as a crucial component of digital government transparency, and free software supports them best.

Furthermore, even in cases where free software does not support a free format or standard, agencies would still be able to help the public make sense of their data simply by distributing the same software that they used to create it. Following such a policy would be the next-best thing to releasing the information in a free format, providing everyone not only with the raw data, but the information necessary to understand it. This practice would only be possible with free software, which ensures that the government has the source code for programs it uses, and can release it to the public.

Free software also offers the government greater control over its own computers -- an increasingly important consideration as they affect more aspects of our daily lives and our interactions with each other. Because the software can be easily modified, agencies would be able to adjust or remove features which may be extraneous or even dangerous in their specific use of it. When customized solutions are needed, they can be developed on top of existing free software in whatever manner is most effective and economical. When defects are discovered, agencies can determine for themselves how the issue is resolved -- and if there is an urgent problem, they would not need to wait on a single company to provide assistance.

Finally, adopting free software in government makes more effective use of tax dollars. Whenever an organization purchases a proprietary software license that limits the number of users or installations, it must spend time and money ensuring it stays in compliance with those terms -- an administrative task with little economic impact. Free software will eliminate the need for that bureaucratic overhead, freeing the funds for use elsewhere. And if there is no ready free software solution for a particular task, the government could maximize economic benefit by contracting developers to fill in the gaps, and releasing the work as free software in turn -- giving the public the most possible benefit from the work it paid for.

For all these reasons, numerous government organizations worldwide -- from individual agencies to entire federal governments -- have started using free software. The Department of Defense has long used free software for countless projects. In 2006, the Federal Aviation Administration switched to a free software operating system for its traffic management systems. More recently, in 2009 the White House web site migrated to a free software platform as well. Elsewhere, substantial deployments have been carried out in Brazil, Germany, Spain, France, Czechoslovakia, and Macedonia. All this activity has brought many benefits to the adopters while reducing the need to spend government resources on copyright enforcement.

II. Free Software Reduces Demand for License Enforcement

All free software, by definition, must allow an organization to use the work for any purpose, commercial or noncommercial, without restriction. Furthermore, most free software licenses have, at most, relatively simple conditions for organizations to follow when they modify the software but do not distribute it. Most of the conditions in free software licenses concern themselves solely with distribution of that software.

The FSF's flagship license, the GNU General Public License (GPL)[2], serves as a clear example of this point. In the latest version of the license, version 3, section 2 explicitly states that the software can be run and modified "without conditions." The following five sections list conditions that licensees must follow when they distribute the software in various different ways, and comprise the bulk of the conditions in the license.

Because free software licenses have so few conditions for private activity, they dramatically reduce the costs of license enforcement for both distributors and users. A proprietary software license, by contrast, typically limits the number of copies that can be installed and/or run. To enforce this, the software developer often invests time and money programming features to prevent license violations, and the user must spend resources to ensure they do not exceed the stated limits. The problem is so severe that worried organizations can buy software that is dedicated to tracking compliance with these proprietary licenses. All of these costs can be avoided by adopting free software.

In a similar way, free software developers require less assistance from the government in pursuing compliance with their licenses, even when they engage in active enforcement activity. Because license compliance in these cases is so focused on distribution of the software, which is often an activity conducted in public (e.g., a company distributes the software to the public as part of a product for sale), free software developers can often confirm that a license violation has occurred without any government assistance. As an example, the FSF has successfully enforced the terms of its licenses in a number of cases without serving subpoenas, overseeing office raids, or resorting to other expensive executive functions. In fact, the FSF has only felt it necessary to sue in court over a license violation in a single case, out of hundreds of cases it has handled over more than a decade.

III. Conclusion

Tax dollars spent to enforce the copyrights and licenses of proprietary software act as a subsidy for a particular kind of business -- one that harms our society by dictating arbitrary rules for how we use our computers. This spending continues despite the fact that the most egregious harms to the public interest in the areas of copyright and patents come not from a lack of enforcement, but from extraordinarily excessive enforcement. If the U.S. government began consistently using free software throughout its operations, and advocating for its adoption elsewhere, we could reduce demand for these activities and productively invest the funds elsewhere. The FSF urges IPEC to advocate for increased free software adoption in government as a means to promote freedom in computing for everyone, reduce demand for copyright enforcement resources, and accomplish the goals of the Joint Strategic Plan.

Sincerely,

Brett Smith
License Compliance Engineer
Free Software Foundation

[1] The Free Software Definition: <<http://www.gnu.org/philosophy/free-sw.html>>

[2] The GNU General Public License: <<http://www.gnu.org/licenses/gpl.html>>

