

## Interrogations on a Passion-Filled Debate on Open-Source Software and the Digital Divide<sup>1</sup>

*Shruti Ahuja-Cogny*

The WSIS was the scene for a panel discussion jointly organized by the Swiss Agency for Development and Cooperation and the Global Knowledge Partnership: "Open Source Software: Pros and Cons from a Development Perspective." The outstanding impressions at the end of the debate were (1) that North and South had confronted each other in a passionate discussion around national interests, economic issues, the struggle against poverty, and the right of developing countries to join in the benefits of the Information Society through use of open-source software (OSS) and (2) that both worlds stayed fundamentally divided on these issues.

The debate gave rise to wholehearted discussions as to the necessity for governments of developing countries to pass laws in order to use OSS technology for their procurement requirements. Thus, giving preference to OSS over proprietary software, thereby developing OSS within their own countries. To this was opposed the argument that there should not be positive discrimination in favor of OSS and both should coexist without prejudice to one or the other.

The discussion, and especially the question-answer session that followed, revealed a well-known chasm between two attitudes. But the debate was also clouded by a hasty approach of the following:

- The definition of OSS was constructed in total opposition to proprietary software, thus leading to stigmatized positions: OSS was being qualified as free—as in free of cost (although this was later clarified) and with no intellectual property rights attached, giving access to source code. It therefore answered the South's needs for reduced-cost development and independence. On the other hand, proprietary software was defined as constrained with property rights (licensing limitations and, therefore, dependence) and commercial interest (payment of heavy royalties often unacceptable for the poorer countries) and obviously giving no ac-

cess to source code and being detrimental to developing countries.

However, as we will see later, OSS and proprietary software are not altogether opposed and can share from a wide spectrum of common characteristics as regards cost, ownership rights, and the right to modify and distribute the software.

- The radical definition of OSS (as explained above) made it an all-encompassing solution for developing countries: OSS was seen to be applicable in all circumstances and at every level of society (government requirements, civil society). OSS was seen as creating jobs, expertise, and companies on a local level. Proprietary software was indirectly accused of stifling job and expertise creation in the South, thereby denying it access to the Information Society. OSS policy needed, therefore, to be established throughout the country at every level, whatever the merits of proprietary software.

Here again, we will establish further that OSS does not have to be seen as a full replacement of proprietary software applicable at all levels of society, but as another viable solution for developing countries along with proprietary software.

Faced with such strong positions and keeping in mind the more realistic definition and characteristics of OSS (which will be developed further, in order to do away with hasty approaches such as those mentioned above), it may seem more interesting to surpass the simplistic North-South debate and, in a provocative manner, question its pertinence by trying to establish that in reality OSS addresses universal questions stretching beyond geographical boundaries.

### ***Both North and South are Subjected to the OSS Evolution in the Hands of Civil Society.***

The tradition in the North has been that investment is carried out in companies for creation and development, the fruits of which must be protected through intellectual property rights, restricting commercial benefits to the companies themselves. The main limit to such an approach and to the exclusive proprietary rights attached thereto has been antitrust law throughout Europe and the United States.

OSS is proving to be another limit to this construction. However, it is based on a different ap-

1. All views expressed are personal.

proach both historically, being a result of the scientific world's exchange and development policy for software within its community, and philosophically, as it is based on Richard Stallman's theory, which started the "free software" approach.<sup>2</sup>

As mentioned earlier, it is important to clarify the concept itself and understand its real implications to avoid misconceptions and extreme positions. OSS is not synonymous with free (as in cost) and without property rights (the author can licence OSS, for example, under the GNU GPL<sup>3</sup> licensing system), but rather "code source access for maintaining control." Due to its specific characteristics, OSS is bound to develop according to its own logic, which is neither South nor North and which is not built on economic principles per se.

Furthermore, today, more complex situations must be dealt with, including semi-OSS, commercial or noncommercial OSS, modifiable or "as is" OSS, and for lack of a clear-cut definition, even OSS is being opposed to "free software" by the advocates of GNU.

A parallel co-regulation (a particular *lex mercatoria*) is being set up by the players (Free Software Foundation<sup>4</sup> principles and GNU GPL licensing, Creative Commons licences<sup>5</sup>) to deal with such issues, thus creating a regulatory framework at the boundaries of current intellectual property rights regula-

tions. Sooner or later the North will have to give voice to this new development and make its property rights regulations evolve to integrate it (as it is currently doing for the Internet). (The OSS issue has already been broached within the French parliamentary bodies<sup>6</sup> during discussions regarding the implementation of the European directive on e-commerce at Member State level<sup>7</sup>).

The South which is aiming at OSS as a solution for its own development, will have to deal with such complexities and the regulations that will apply, as well as the economic model of OSS producers which may in itself be a constraint for development and require heavy funding or modifications to make it economically viable. The same is true for the North.

Therefore, both North and South face a different logic and a more complex evolution of OSS and proprietary software, as the latter adapts to the advent of OSS. Aiming for radical solutions on development grounds may not integrate the real facts about OSS. The South will have to adopt a more practical approach to these issues and seek out the benefits from both OSS and proprietary software.

Proprietary software may indeed be the best solution for some or even most of the software, in particular day-to-day and "consumer-type" software. Therefore, it may be in the interest of both North and South to understand the implications of

2. Stallman, R. (2002). *Free Software, Free Society: The Selected Essays of Richard M. Stallman*. Boston: GNU Press.

3. GNU GPL stands for "GNU General Public Licence." It is a licensing system that attempts to guarantee freedom to share and modify free software. GNU stands for GNUs Not Unix." The GNU project was launched in 1984 to develop a complete Unix-type operating system, known as the GNU system and which is free software. Its widely used variant is Linux, or more accurately, GNU/Linux. <http://www.gnu.org/home.html>

4. The Free Software Foundation (FSF) was created in 1985 and is "dedicated to promoting computer users' right to use, study, copy, modify, and redistribute computer programs. The FSF promotes the development and use of free (as in freedom) software, particularly the GNU operating system . . . , and free (as in freedom) documentation. The FSF also helps to spread awareness of the ethical and political issues of freedom in the use of software." <http://www.gnu.org/fsf/fsf.html>

5. The Creative Commons project was initiated in 2001 and proposes licensing solutions for creators to "dedicate their creative works to the public domain—or retain their copyright while licensing them as free for certain uses, on certain conditions." Unlike the GNU GPL, Creative Commons licenses are not designed for software, but rather for other kinds of creative works: Web sites, scholarship, music, film, photography, literature, courseware, etc. The licensing system is based on a "share what you want, keep what you want principle" and enables the authors to distribute their creations freely, subject to conditions applicable to the creation and which they determine under the chosen licence. <http://creativecommons.org/learn/aboutus>

6. Assemblée Nationale, "Compte rendu analytique officiel, session ordinaire de 2003–2004—45ème jour de séance, 115ème séance, 2ème séance du mercredi 7 janvier 2004". <http://www.assemblee-nat.fr/12/cra/2003–2004/115.asp>.

7. *Projet de loi pour la confiance dans l'économie numérique*, <http://www.assemblee-nat.fr/12/projets/pl0528.asp>. Currently under discussion within the French Parliament, implementing at Member State level the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of Information Society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce", Official Journal L 178, 17/07/2000 P. 0001–0016. [http://europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=3200L0031&model=guichetti](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=3200L0031&model=guichetti)).

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OSS as it inevitably evolves, and work together for coexistence of both types of software.

### ***Both North and South Are Faced with Dependency Issues which They Must Address.***

Setting aside questions of software preference for day-to-day “consumer-type” software, for which the choice between OSS or proprietary solutions may not be of great significance for either North or South, both are faced with the critical issue: as countries become more dependent for their operation and for the areas of national interest on computers and, in particular, on their operating systems and strategic applications, it seems that at this level we are no longer dealing with software but the infrastructure of a country—whatever the country. As such, North and South must question their reliance and dependence on and their lack of access to the basis of their infrastructure: the source code of operating systems and strategic software, and the ability to maintain their autonomy in certain areas (e.g., defense, healthcare). It is no longer an economic issue but a question of national interest. As voices from developing countries rise to claim the right to such independence, should not the developed countries be asking themselves the same questions?<sup>8</sup> Should they not learn from the South and adopt a policy on this matter and not be content to choose on a case-by-case basis? North and South should be speaking the same language.

### ***Both North and South Are Building an Information Society Accessible to All Their Citizens.***

As operating systems and fundamental software become prevalent in all levels of society, in the same way as water, electricity, and roads, they may also be regarded as an essential service that governments must provide as part of the Information Society. As such, it must present the characteristics of a public or universal service: accessible to all, at low cost.

In developed countries, this issue has not yet been addressed. But as with telecommunications and audiovisual technology, sooner or later the problem will be raised (as it will be raised for broadband telecommunication systems accessible to all), especially in Europe, which is more attuned to the concept of “universal service.”

For example, governments may be required to provide solutions guaranteeing at minimum that operating systems (which are the backbone of all software solutions) be (a) standardized and (b) low cost so they are accessible to all. To provide for such universal service, the North will need to turn toward solutions that allow such service. OSS certainly answers these prerequisites at present. The same issues will be raised in the South.

Many questions regarding OSS versus proprietary software are unresolved. Many more are to come as both areas evolve to and intertwine. However, the debate is not over a North-South chasm, as it may appear to the listeners at the conference, but over the best ways available for countries to join in and benefit from a developing Information Society for themselves and their citizens. ■

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8. For France, see footnote 4.