

# Managing rights in free/libre/open source software

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# Rights, protection and creativity

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State granted temporary monopolies as an incentive for creativity and innovation: copyright, patents...

These protect *creations*, not necessarily *creativity*

Past creations are rewarded while future creations become more difficult to build

# Mechanics of rights protection

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A work is created. It is then exclusively appropriated by the creator, with a limited, temporary monopoly granted by the state.

Monopoly rewards creator.

Monopoly provides incentive for future creation.

# Mechanics of rights protection

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Copyright: monopoly is on reproducing work, preventing follow-on creation.

Patent: monopoly extends to prevent independent creation.

# Collaborative creation

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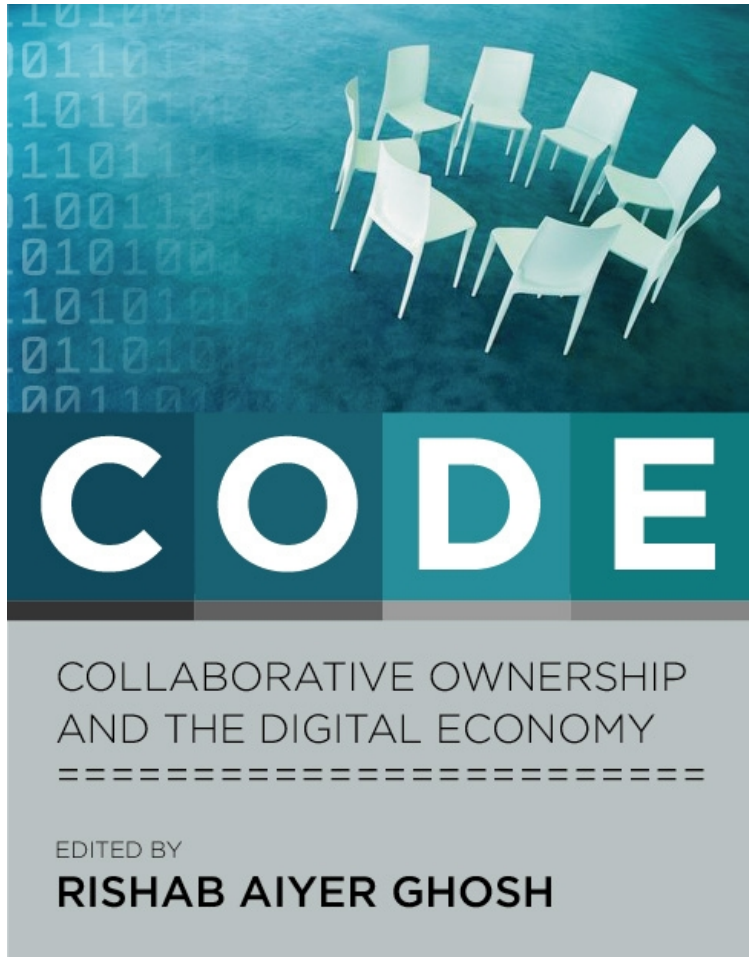
Exclusive appropriation is not a pre-requisite for innovation. Indeed, it may hamper innovation.

Many forms of “Collaborative ownership and development” in history, in different societies

Free/Libre/Open Source Software (FLOSS) most recent, headline-grabbing incarnation

# Collaborative production

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## **CODE: Collaborative Ownership and the Digital Economy**

**MIT Press, 2005**

Rishab A. Ghosh, ed.

Philippe Aigrain, Yochai Benkler,  
Boatema Boateng, David Bollier,  
James Boyle, John Clippinger,  
Paul David, Cori Hayden, Tim  
Hubbard, Chris Kelty, James  
Leach, James Love, Fred Myers,  
Anthony Seeger, Richard  
Stallman, Marilyn Strathern

# Extent of creativity in FLOSS

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Debian 2.2 GNU/Linux (2001):

Source lines of code: 55,201,526

If Debian was written in a software company:

Estimated effort: 14,005 person years

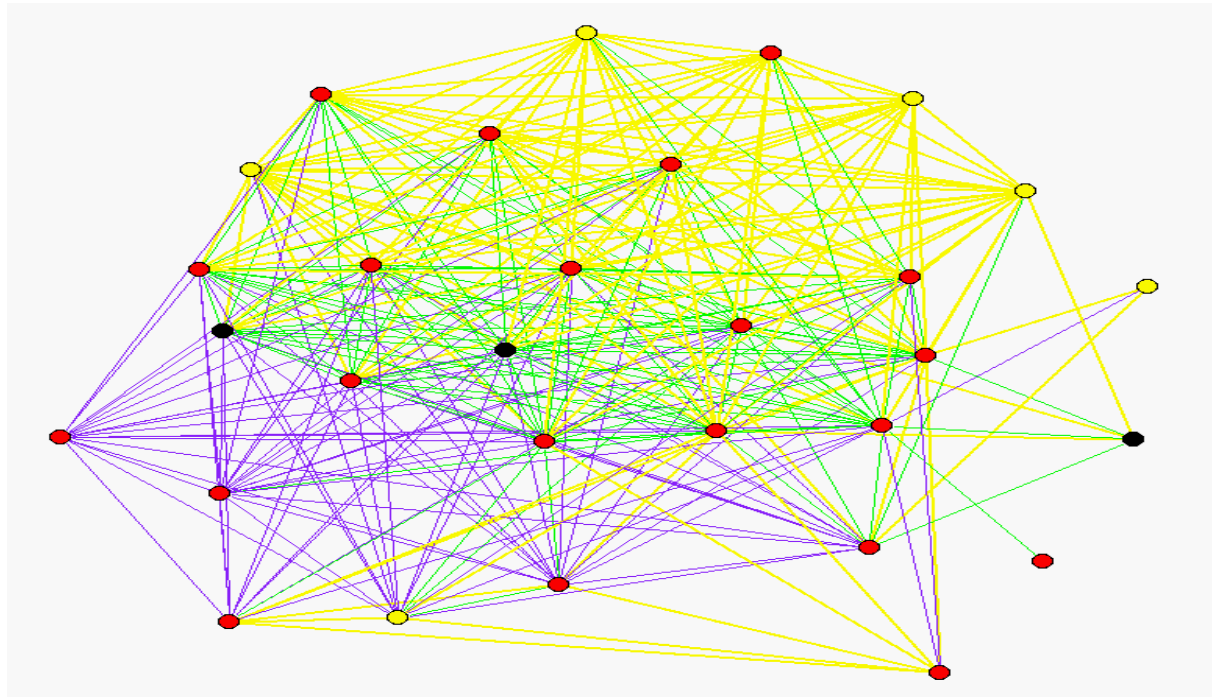
Estimated schedule: 6.04 years (team of 2,318)

Development cost: US\$ 1,891,990,000

(Source: "Counting potatoes" by Gonzalez-Barahona et al)

# Extent of collaboration in FLOSS

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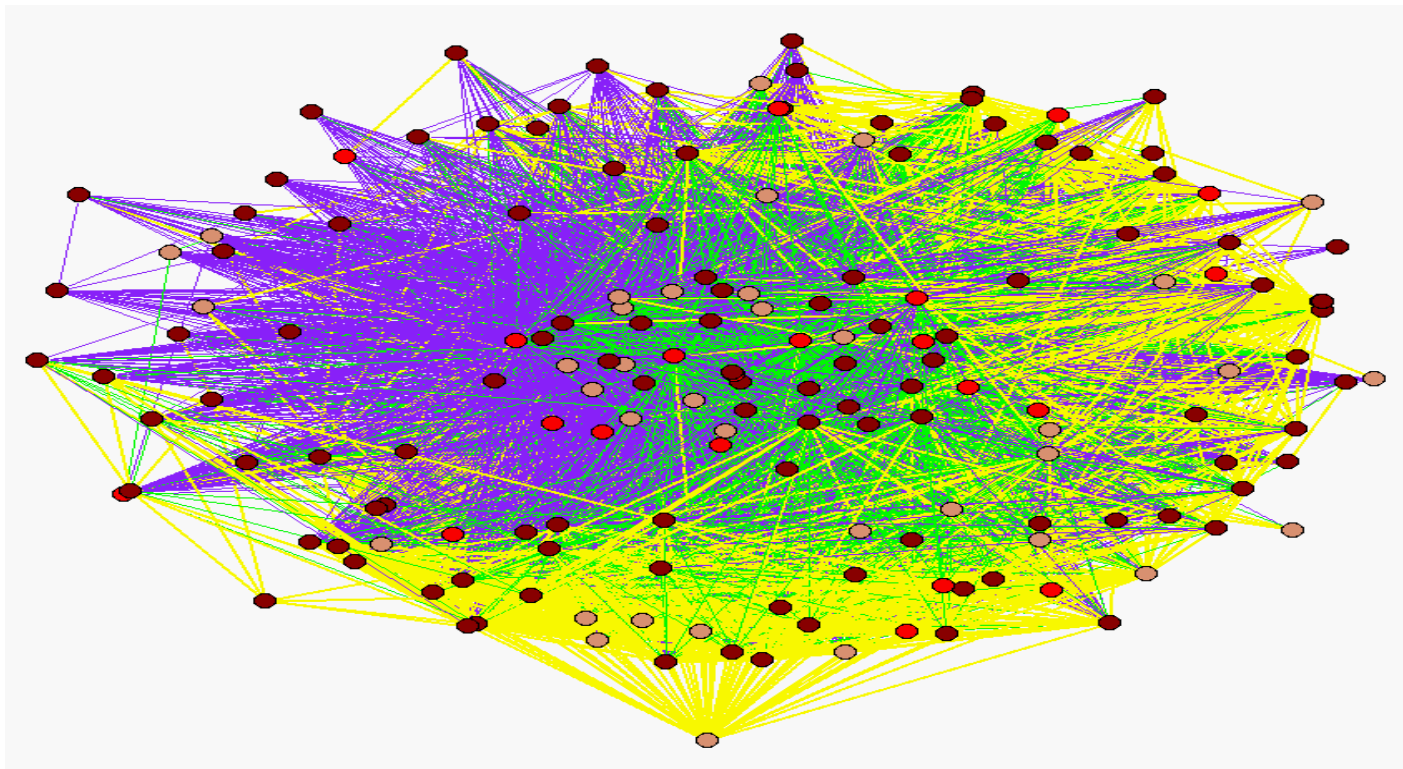
Linux Kernel v1.0. 1994. 158 authors. Nodes are 30 modules.  
Arcs represent **common authors**, **code dependencies**, or **both**

(Source: "Nature and composition...", Ghosh & David)



# Extent of collaboration in FLOSS

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Linux Kernel v2.5.25. 2002. 2263 authors. Nodes are 169 modules.

Arcs represent **common authors**, **code dependencies**, or **both**

(Source: "Nature and composition...", Ghosh & David)

# FLOSS: rights

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FLOSS is not public domain

Software with “Four Freedoms” (Stallman)

- Freedom to use
- Freedom to study
- Freedom to modify
- Freedom to share

# FLOSS: rights

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Software authors own their code

Software authors, as owners, can safely “give it away”

They can impose conditions

Conditions may perpetuate “Four Freedoms”

# FLOSS: rights

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Software authors own their code

Software is automatically protected by copyright

Copyright belongs to the *authors* (or employers)

Authors have the sole right to license their software

Software users must follow licence terms – otherwise they are infringing authors' copyright

# FLOSS: rights

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Software authors can safely “give it away”

“Giving it away” is releasing to the public domain

This is rare

Two licensing models: *permissive* and *reciprocal*

*Permissive*: close to public domain

*Reciprocal*: not public domain, “protected commons”

# FLOSS: rights

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Software authors can impose conditions

Proprietary licence terms add restrictions above the protections of copyright: restrictive contracts

FLOSS licences only place conditions on the use of copyright: not necessarily contracts

Without following conditions, users are infringing copyright

# FLOSS: obligations

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*Permissive*: terms close to public domain

...with liability and warranty disclaimers

Examples: BSD, Apache...

# FLOSS: obligations

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*Reciprocal*: terms to propagate “Four Freedoms”

Derivative works must be distributed under the same  
terms: *works derived from FLOSS remain FLOSS*

Examples: GPL, LGPL, Mozilla Public License



# FLOSS: protected commons

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*Reciprocal* licences ensure that development remains collaborative, cannot be exclusively appropriated

Relies on copyright for legal validity

Reciprocity conditions are enforceable (simply under copyright law)

Reciprocity provides incentive for new contributors, including firms

# Reciprocity and incentives

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60% of developers think the role of a licence is  
“To prevent others from appropriating the  
software we've created” (FLOSS-US survey)

Firms prefer GPL because “It allows to keep the  
code open and forbids competitors to turn it  
into proprietary.” (Bonaccorsi & Rossi)

Reciprocity requirements encourage disclosure,  
collaboration and innovation

# FLOSS misconceptions

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FLOSS prevents commercial activity

FLOSS software can be “taken over” (by a firm)

GPL deprives authors of their rights

GPL deprives firms of their rights

FLOSS (GPL) prevents innovation

# FLOSS misconceptions

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FLOSS prevents commercial activity

By definition (OSI, FSF), a licence that *prevents* charging for software is not a FLOSS licence

*Source code* cannot be charged for

But source code must *only* be given, under a licence allowing modification, to recipients of binary code (which can be charged for)

Recipients can redistribute, which drives *sale price* to zero; commercial models are usually service-based

# FLOSS misconceptions

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FLOSS software can be “taken over” (by a firm)

Yes, with permissive licences (BSD code in Windows)

No, with reciprocal licences

GPL ensures that even original copyright holders can only “take over” new versions of the software

Old versions remain irrevocably FLOSS

Linux kernel: >2500 individual copyright holders

# FLOSS misconceptions

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GPL deprives authors of their rights

Original authors *choose* to “give away” their software;

Authors are not bound by GPL terms for *licensees*

New contributors have full rights to their own contributions – but they cannot build upon another work without respecting the rights of the first work's author.

New authors have no “right” to infringe original authors' copyright – by violating GPL terms!

# FLOSS misconceptions

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## GPL deprives firms of their rights

As with authors' rights – firms can dual-license

Firms have no “right” to software created by others

Firms (developers) making significant contributions to FLOSS prefer reciprocal licences such as the GPL

Firms (users) making minor contributions prefer the MPL/CDDL (with limited reciprocity requirements)

Firms (users) that prefer permissive licences want to appropriate the work of others!

# FLOSS misconceptions

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FLOSS (GPL) prevents innovation

GPL incentivises disclosure (> patent system)

GPL prevents disclosure from leading to 3<sup>rd</sup>-party appropriation (> patent system)

GPL encourages follow-on innovation (> patent system)



# FLOSS misconceptions

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FLOSS (GPL) prevents innovation

FLOSS prevents monetisation only (partially) through sale price

Packaged software is <30% of US market, <10-20% elsewhere. Most software innovation is monetised otherwise (customisation, integration, services)

# FLOSS and patents

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FLOSS rights management assumes that creators have sole rights to what they create

Copyright: independent creation allowed

Creators can be certain that they have sole rights to what they create, and safely “give it away”

# FLOSS and patents

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FLOSS rights management assumes that creators have sole rights to what they create

Copyright: independent creation allowed -

Patents: independent creation can infringe

Patents deprive creators of sole rights to their creation  
– so they *cannot* safely “give it away”

Patents are essentially incompatible with FLOSS

# References

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FLOSS survey, CALIBRE project (MERIT):

[flossproject.org](http://flossproject.org), [www.calibre.ie](http://www.calibre.ie)

FLOSS-US survey (Stanford – Paul David et al):

[www.stanford.edu/group/floss-us/stats/q7.html](http://www.stanford.edu/group/floss-us/stats/q7.html)

Ghosh & David 2003, “Nature and composition of the Linux kernel”,  
Stanford SIEPR working paper, <http://dxm.org/papers/licks1/>

Gonzalez-Barahona et al, 2003, “Counting Potatoes”, <http://libresoft.urjc.es>

Bonaccorsi, Andrea & Cristina Rossi

Licensing schemes in the production and distribution of Open Source software. An empirical investigation: <http://opensource.mit.edu/papers/>