

# OSI's Simon Phipps on Open Source's Past and Future

With an eye on the future, the Open Source Initiative's president sits down and talks with *Linux Journal* about the organization's 20-year history.

*By Christine Hall*

It would be difficult for anyone who follows Linux and open source to have missed the [20th birthday of open source](#) in early February. This was a dual celebration, actually, noting the passing of 20 years since the term “open source” was first coined and since the formation of the [Open Source Initiative](#) (OSI), the organization that decides whether software licenses qualify to wear that label.

The party came six months or so after Facebook was successfully convinced by the likes of the Apache Foundation; WordPress's developer, Automatic; the Free Software Foundation (FSF); and OSI to [change the licensing of its popular React project](#) away from the BSD + Patents license, a license that had flown under the radar for a while.

The brouhaha began when Apache developers noticed a term in the license forbidding the suing of Facebook over any patent issues, which was troublesome because it gave special consideration to a single entity, Facebook, which pretty much disqualified it from being an open-source license.

Although the incident worked out well—after some grumblings Facebook relented and changed the license to MIT—the Open Source Initiative fell under some criticism



**Simon Phipps delivers the keynote at Kopano Conference 2017 in Arnhem, the Netherlands.**

for having approved the BSD + Patents license, with some people suggesting that maybe it was time for OSI to be rolled over into an organization such as the Linux Foundation.

The problem was that OSI had never approved the BSD + Patents.

“BSD was approved as a license, and Facebook decided that they would add the software producer equivalent of a signing statement to it”, OSI’s president, Simon Phipps, recently explained to *Linux Journal*. He continued:

They decided they would unilaterally add a patent grant with a defensive clause in it. They found they were able to do that for a while simply because the community accepted it. Over time it became apparent to people that it was actually not an acceptable patent grant, that it unduly favored Facebook and that if it was allowed to grow to scale, it would definitely create an environment where Facebook was unfairly advantaged.

He added that the Facebook incident was actually beneficial for OSI and ended up being a validation of the open-source approval process:

I think the consequence of that encounter is that more people are now convinced that the whole licensing arrangement that open-source software is under needs to be approved at OSI.

I think prior to that, people felt it was okay for there just to be a license and then for there to be arbitrary additional terms applied. I think that the consensus of the community has moved on from that. I think it would be brave for a future software producer to decide that they can add arbitrary terms unless those arbitrary terms are minimally changing the rights and benefits of the community.

As for the notion that OSI should be folded into a larger organization such as the Linux Foundation?

“When I first joined OSI, which was back in 2009 I think, I shared that view”, Phipps said. He continued:

I felt that OSI had done its job and could be put into an existing organization. I came to believe that wasn't the case, because the core role that OSI plays is actually a specialist role. It's one that needs to be defined and protected. Each of the organizations I could think of where OSI could be hosted would almost certainly not be able to give the role the time and attention it was due. There was a risk there would be a capture of that role by an actor who could not be trusted to conduct it responsibly.

That risk of the license approval role being captured is what persuaded me that I needed to join the OSI board and that I needed to help it to revamp and become a member organization, so that it could protect the license approval role in perpetuity. That's why over the last five to six years, OSI has dramatically changed.

This is Phipps' second go at being president at OSI. He originally served in the position from 2012 until 2015, when he stepped down in preparation for the end of

his term on the organization's board. He returned to the position last year after his replacement, Allison Randal, suddenly stepped down to focus on her pursuit of a PhD.

His return was pretty much universally seen in a positive light. During his first three-year stint, the organization moved toward a membership-based governance structure and started an affiliate membership program for nonprofit charitable organizations, industry associations and academic institutions. This eventually led to an individual membership program and the inclusion of corporate sponsors.

Although OSI is one of the best known open-source organizations, its grassroots approach has helped keep it on the lean side, especially when compared to organizations like the behemoth Linux or Mozilla Foundations. Phipps, for example, collects no salary for performing his presidential duties. Compare that with the Linux Foundation's executive director, Jim Zemlin, whose salary in 2010 was reportedly north of \$300,000.

"We're a very small organization actually", Phipps said. He added:

We have a board of directors of 11 people and we have one paid employee. That means the amount of work we're likely do behind the scenes has historically been quite small, but as time is going forward, we're gradually expanding our reach. We're doing that through working groups and we're doing that through bringing together affiliates for particular projects.

While the public perception might be that OSI's role is merely the approval of open-source licenses, Phipps sees a larger picture. According to him, the point of all the work OSI does, including the approval process, is to pave the way to make the road smoother for open-source developers:

The role that OSI plays is to crystallize consensus. Rather than being an adjudicator that makes decisions ex cathedra, we're an organization that provides a venue for people to discuss licensing. We then identify consensus as it arises and then memorialize that consensus. We're more speaker-of-the-house than king.

That provides an extremely sound way for people to reduce the burden on developers of having to evaluate licensing. As open source becomes more and more the core of the way businesses develop software, it's more and more valuable to have that crystallization of consensus process taking out the uncertainty for people who are needing to work between different entities. Without that, you need to constantly be seeking legal advice, you need to constantly be having discussions about whether a license meets the criteria for being open source or not, and the higher uncertainty results in fewer contributions and less collaboration.

One of OSI's duties, and one it has in common with organizations such as the Free Software Foundation (FSF), is that of enforcer of compliance issues with open-source licenses. Like the FSF, OSI prefers to take a carrot rather than stick approach. And because it's the organization that approves open-source licenses, it's in a unique position to nip issues in the bud. Those issues can run the gamut from unnecessary licenses to freeware masquerading as open source. According to Phipps:

We don't do that in private. We do that fairly publicly and we don't normally need to do that. Normally a member of the license review mailing list, who are all simply members of the community, will go back to people and say "we don't think that's distinctive", "we don't think that's unique enough", "why didn't you use license so and so", or they'll say, "we really don't think your intent behind this license is actually open source." Typically OSI doesn't have to go and say those things to people.

The places where we do get involved in speaking to people directly is where they describe things as open source when they haven't bothered to go through that process and that's the point at which we'll communicate with people privately.

The problem of freeware—proprietary software that's offered without cost—being marketed under the open-source banner is particularly troublesome. In those cases, OSI definitely will reach out and contact the offending companies, as Phipps says, "We do that quite often, and we have a good track record of helping people understand why it's to their business disadvantage to behave in that way."

One of the reasons why OSI is able to get commercial software developers to heed its advice might be because the organization has never taken an anti-business stance. Founding member Michael Tiemann, now VP of open-source affairs at Red Hat, once said that one of the reasons the initiative chose the term “open source” was to “dump the moralizing and confrontational attitude that had been associated with ‘free software’ in the past and sell the idea strictly on the same pragmatic, business-case grounds that had motivated Netscape.”

These days, the organization has ties with many major software vendors and receives most of its financial support from corporate sponsors. However, it has taken steps to ensure that corporate sponsors don't dictate OSI policy. According to Phipps:

If you want to join a trade association, that's what the Linux Foundation is there for. You can go pay your membership fees and buy a vote there, but OSI is a 501(c)(3). That's means it's a charity that's serving the public's interest and the public benefit.

It would be wrong for us to allow OSI to be captured by corporate interests. When we conceived the sponsorship scheme, we made sure that there was no risk that would happen. Our corporate sponsors do not get any governance role in the organization. They don't get a vote over what's happening, and we've been very slow to accept new corporate sponsors because we wanted to make sure that no one sponsor could have an undue influence if they decided that they no longer liked us or decided to stop paying the sponsorship fees.

This pragmatic approach, which also puts “permissive” licenses like Apache and MIT on equal footing with “copyleft” licenses like the GPL, has traditionally not been met with universal approval from FOSS advocates. The FSF's Richard Stallman has been critical of the organization, although noting that his organization and OSI are essentially on the same page. Years ago, OSI co-founder and creator of The Open Source Definition, Bruce Perens, decried the “schism” between the Free Software and Open Source communities—a schism that Phipps seeks to narrow:

As I've been giving keynotes about the first 20 years and the next ten years of open

source, I've wanted to make very clear to people that open source is a progression of the pre-existing idea of free software, that there is no conflict between the idea of free software and the way it can be adopted for commercial or for more structured use under the term open source.

One of the things that I'm very happy about over the last five to six years is the good relations we've been able to have with the Free Software Foundation Europe. We've been able to collaborate with them over amicus briefs in important lawsuits. We are collaborating with them over significant issues, including privacy and including software patents, and I hope in the future that we'll be able to continue cooperating and collaborating. I think that's an important thing to point out, that I want the pre-existing world of free software to have its due credit.

Software patents represent one of several areas into which OSI has been expanding. Patents have long been a thorny issue for open source, because they have the potential to affect not only people who develop software, but also companies who merely run open-source software on their machines. They also can be like a snake in the grass; any software application can be infringing on an unknown patent. According to Phipps:

We have a new project that is just getting started, revisiting the role of patents and standards. We have helped bring together a post-graduate curriculum on open source for educating graduates on how to develop open-source software and how to understand it.

We also host other organizations that need a fiduciary host so that they don't have to do their own bookkeeping and legal filings. For a couple years, we hosted the Open Hatch Project, which has now wound up, and we host other activities. For example, we host the mailing lists for the California Association of Voting Officials, who are trying to promote open-source software in voting machines in North America.

Like everyone else in tech these days, OSI is also grappling with diversity issues. Phipps said the organization is seeking to deal with that issue by starting at the

membership level:

At the moment I feel that I would very much like to see a more diverse membership. I'd like to see us more diverse geographically. I'd like to see us more diverse in terms of the ethnicity and gender of the people who are involved. I would like to see us more diverse in terms of the businesses from which people are employed.

I'd like to see all those improve and so, over the next few years (assuming that I remain president because I have to be re-elected every year by the board) that will also be one of the focuses that I have.

And to wrap things up, here's how he plans to go about that:

This year is the anniversary year, and we've been able to arrange for OSI to be present at a conference pretty much every month, in some cases two or three per month, and the vast majority of those events are global. For example, **FOSSASIA** is coming up, and we're backing that. We are sponsoring a hostel where we'll be having 50 software developers who are able to attend FOSSASIA because of the sponsorship. Our goal here is to raise our profile and to recruit membership by going and engaging with local communities globally. I think that's going to be a very important way that we do it. ■

---

**Christine Hall** has been a journalist since 1971. In 2001, she began writing a weekly consumer computer column, and she started covering Linux and FOSS in 2002 after making the switch to GNU/Linux. When not writing about tech, she can be found watching Netflix or anything else she can find that's not housecleaning. Follow her on Twitter: @BrideOfLinux.

Send comments or feedback  
via <http://www.linuxjournal.com/contact>  
or email [ljournal@linuxjournal.com](mailto:ljournal@linuxjournal.com).