



# **Free Open Source Software and Dual-Use :**

## **Loophole or Dissent ?**

**European Open Source & Free Software Law Event 2011**

**Barcelona**

**Nathalie Foutel**

# OVERVIEW

- **Introduction**
- **Interpretation of dual-use regulation in FLOSS**
- **Dissent from authorities opinion**
- **Conclusion**

## What are Dual-use goods ?

- Products and technologies normally created or used for civilian purposes but which may have military applications.
- Examples :
  - ✓ Drones (unmanned material vehicles)
  - ✓ Everything that countries think might give an adversary a military advantage...

## What is the dual-use regulation for ?

- For export control, so as to stem the proliferation of weapons of mass destruction.

## What are dual-use regulations in the world ?

- Wassenaar Arrangement which requires an export control permit to cross the national boundary with dual-use goods.
  - In EU : signatory states must implement this arrangement in their own way ( Reg. EU 428/2009, 5th May 2009) ;
  - In US : Export Administration Regulation (EAR)

## What is the problem between dual-use regulation and FLOSS ?

- Dual-use regulation prohibits the distribution of dual-use software's source code in exportation : all the technologies and goods are listed in 9 categories repeated in the European regulation and in the EAR.
- FLOSS means the opposite : FLOSS give everyone the right to study, modify, publish with or without modification the software in the world.

## What is the FLOSS or community interpretation of dual-use regulation ?

- In the introduction of Wassenaar Arrangement, there is a « general software note ».
  - That note explains that « the lists do not control "software" which is either : (...)
    1. in the public domain ».

## What is the FLOSS or community interpretation of dual-use regulation ?

- Examples :
  - ✓ Apache License interprets this « public domain » regarding the definition :  
“Definitions of terms used in these lists” we find *“In the public domain”* defined as *““technology” or “software” which has been made available without restrictions upon its further dissemination. Note : Copyright restrictions do not remove “technology” or “software” from being “in the public domain”.*
  - ✓ Python License : same as Apache License with also a transfer of responsibility to licensees for their exportation.
  - ✓ Mozilla License under License Exception in the §740.13 EAR  
« Unrestricted encryption source code ».

## What are the US and EU points of view ?

- ✓ US : since the « PGP story » and for political reasons, open source software which is also a dual-use software can be distributed under FLOSS. Until when ?
- ✓ EU : it's a dissent opinion, and the awareness of the issue will deal with this issue by changing the EU regulation in the next years.

# CONCLUSION

## Proposal :

- ✓ Acceptance of dual-use software's distribution under FLOSS ;
- ✓ With a control of « licensees » downloads and ;
- ✓ An agreement between first licensor (exporter in the dual-use regulation) and contributors which permits control of its destination and its end-use ?



**THANKS FOR YOUR TIME**