GPL “Liberty or Death!” Clause: An Israeli Case Study

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Abstract

This Article analyzes Section 12 of the GPL in light of a national statutory regime that directly conflicts with some of the core requirements of the license. The Israeli Encouragement of Industrial Research and Development Law restricts an entity's ability to disclose source code or provide certain licenses required under the GPL. This article analyzes the application of the GPL in this particular statutory setting, but also bears on broader interpretative issues raised when the GPL conflicts with local law. The article also discusses the purpose and scope of Section 12, and highlights the potential consequences of ignoring the impact of local regulatory issues in assessing the effect of the GPL.

Keywords

Law; Free and Open Source Software; GPL, Section 12

Introduction

This Article analyzes Section 12 of version 3 of the General Public License (the “GPL”) in light of a national statutory regime that directly conflicts with some of the core requirements of the license. Section 12, which has been referred to as the GPL's “Liberty or Death” clause,[1] is an attempt to ensure that the freedoms granted by the GPL are not taken away by other statutory, judicial or contractual obligations. In pursuing this goal, Section 12 provides that users who are not able to comply with the obligations of the license may not convey a licensed work at all.

The Israeli Encouragement of Industrial Research and Development Law (the “R&D Law”) restricts an entity's ability to comply with several obligations of the GPL, including the obligation

1 The first draft of Version 3 of the GPL titled this section “Liberty or Death for the Program,” but this colourful title was changed to the only slightly less provocative “No Surrender of Others' Freedom” in the second draft of the license. Unless stated otherwise, all section references in this article are to version 3 of the GPL.

to distribute source code. As such, when the R&D Law applies to a GPL-licensed program, it directly conflicts with the core requirements of the license and triggers the application of Section 12. The analysis here clarifies the application of the GPL in this particular statutory setting, but also bears on broader interpretative issues raised when the GPL conflicts with local law. In addition, the article discusses several questions regarding the purpose and scope of the “Liberty or Death” clause. The analysis also highlights the potential consequences of ignoring the impact of local regulatory issues in assessing the effect of the GPL, as well as providing lessons for the structuring of similar regimes in other countries.[2]

In full, Section 12 provides:

> *If conditions are imposed on you (whether by court order, agreement or otherwise) that contradict the conditions of this License, they do not excuse you from the conditions of this License. If you cannot convey a covered work so as to satisfy simultaneously your obligations under this License and any other pertinent obligations, then as a consequence you may not convey it at all. For example, if you agree to terms that obligate you to collect a royalty for further conveying from those to whom you convey the Program, the only way you could satisfy both those terms and this License would be to refrain entirely from conveying the Program.*

Several interpretative issues are immediately raised by the language of the provision. First, it is not immediately clear what operative purpose the provision serves, since Section 8 of the GPL in any event provides that distribution of a program in violation of the license “automatically” terminates the licensee's rights under the GPL. Second, it is clear that the primary concern of the provision seems to have been the threat posed by patent litigation and consequent settlement and licensing arrangements.[3] As such, the provision expressly refers to the “court orders” and “agreements” that “contradict the terms of this License,” but glosses over the possibility that national law or regulations may also conflict with the terms of the GPL. In a similar vein, the example in the provision directly addresses the possibility that a licensee may be subject to a separate agreement that would obligate it to collect a royalty for distributing a GPL-licensed work, but does not address the possibility that local law may contradict the terms of the license. Nevertheless, the broad drafting of the provision seems to state that Section 12 is triggered by any obligations that contradict the terms of the license, whether that obligation is judicial, contractual or statutory.

Version 3 of the GPL made some minor changes to the previous formulation of this clause in version 2 of the license. First, the initial sentence of the clause was revised slightly to clarify that, in addition to the judgments of a court, the provision also covers contractual agreements and

2 The Canadian Province of Ontario, for example, has considered imitating this Israeli regime. See http://www.thestar.com/news/ontario/article/814123--israeli-scientific-success-convinces-premier-mcguinty-to-name-a-chief-scientist-to-advise-government.

3 The threat posed to free and open source software by the possibility that patent license agreements may require the collection of royalties for the distribution of such software is a motif than runs through the GPL. For example, the third through fifth paragraphs of Section 11 of the GPL address the issues raised by the Microsoft/Novell patent settlement of 2006, pursuant to which Novell agreed to pay royalties to Microsoft in consideration for Microsoft not bringing patent litigation against Novell's Linux software. For a broader discussion of this topic, see Free Software Foundation, GPLv3 Third Discussion Draft Rationale, at Section 3.4.4, *available at* gplv3.fsf.org/gpl3-dd3-rationale.pdf.

settlement arrangements that contradict the conditions of the license. Second, version 3 of the GPL omitted the severability provision which was previously included in the license. The severability provision had stated that:

> *If any portion of this section is held invalid or unenforceable under any particular circumstance, the balance of the section is intended to apply and the section as a whole is intended to apply in other circumstances.*

The deletion of this provision was a tactical decision made by the drafters of the GPL in the belief that this omission would ensure that all provisions of the GPL are held up in court.[4] Third, the previous version of the GPL had included a relatively lengthy explanation of the rationale behind this provision of the GPL, and this explanation was omitted in version 3 of the license.[5]

This article examines the provisions of Section 12 in light of the specific requirements of the Israeli R&D Law. Section II provides a short summary of the goals and requirements of the R&D Law. Section III provides an in-depth discussion of how these requirements contradict the obligations of the GPL. Section IV discusses the operative effect of Section 12 given the contradicting requirements between the GPL and the R&D Law. Section V concludes by suggesting an explanation of the purpose served by Section 12.

The Israeli Research and Development Law

The Israeli R&D Law was adopted in 1984, and provides a statutory framework for the grant of government seed money to Israeli technology start-up companies.[6] The R&D Law established the Office of the Chief Scientist ("OCS") which, as a part of its general mission to assist in the development of technology in Israel, reviews and approves grants for industrial research and development. The R&D Law requires the OCS to consider, in determining whether to award a grant, the economic benefit of the technology to Israel. In 2010, the OCS disbursed approximately $400 million in grant money to some 600 companies.[7] The impact of OCS funding is significant in encouraging the growth of the Israeli hi-tech industry, and it is not unusual for Israeli software companies to be the recipients of substantial OCS seed funding.

OCS grants are not "free money" – they are typically structured such that commercial success of

4 See Free Software Foundation, GPLv3 First Discussion Draft Rationale, Section 2.1, *available at* http://gplv3.fsf.org/gpl-rationale-2006-01-16.html.

5 Section 7 of version 2 of the GPL had provided that "[i]t is not the purpose of this section to induce you to infringe any patents or other property right claims or to contest validity of any such claims; this section has the sole purpose of protecting the integrity of the free software distribution system, which is implemented by public license practices. Many people have made generous contributions to the wide range of software distributed through that system in reliance on consistent application of that system; it is up to the author/donor to decide if he or she is willing to distribute software through any other system and a licensee cannot impose that choice." While this provision did state that the purpose of the section was "protecting the integrity of the free software distribution system," this does not help to explain the operative necessity of the provision in the context of the license.

6 The OCS has provided an unofficial translation of the R&D Law, which is available at http://www.tamas.gov.il/NR/exeres/9F263279-B1F7-4E42-828A-4B84160F7684.htm. This unofficial translation has not yet been updated to reflect all current amendments to the law.

7 http://www.moit.gov.il/NR/rdonlyres/83C79A59-DCCE-4950-8257-DE48B9D0B9DC/0/IncentivePrograms.pdf

the funded technology obligates the receiving company to make payment of “royalties” to the OCS.[8] These are typically calculated as a percentage of sales. In addition to these payment obligations, the R&D Law restricts the transfer of intellectual property and other know-how developed as a result of the grant.[9] Moreover, grant recipients are typically required by the OCS to execute written undertakings in which the recipient expressly agrees not to transfer rights to OCS-funded technology without the consent of the OCS. The OCS typically approves transfers of such intellectual property between Israeli entities, provided that the transferee accepts all obligations associated with the grant. Transfers of rights to OCS-funded technology outside of Israel, if approved by the OCS, are usually subject to the payment by the grant recipient of a lump-sum amount, calculated pursuant to complex statutory formulas. The R&D Law does not provide clear guidance regarding the grant of licenses to OCS-funded intellectual property and, in actual practice, the OCS scrutinizes such transactions, may prohibit the grant of such licenses, and can require the payment of royalties prior to the approval of any such transaction.[10]

The OCS has put forth a broad interpretation of the kind of know-how and intellectual property that is subject to the transfer restrictions of the R&D Law. As such, the OCS requires its consent both for a transfer of the legal rights in any grant-developed know-how, as well as for a transfer of the substance of such know-how. In the context of software, for example, the position of the OCS is that the source code of software developed with grant monies may not be transferred without OCS consent. The OCS has further opined that commercial source code escrows may violate the transfer restrictions of the R&D Law unless they comply with specified requirements, including regarding release conditions. In addition, the position of the OCS is that any license granted pursuant to the release of a source code escrow must be limited to the maintenance and support of the escrowed code. The escrow agreement is also subject to the approval of the OCS.[11]

The royalty obligations and transfer restrictions imposed by the OCS and the R&D law have become increasingly important for commercial entities seeking investment or looking to be acquired. International acquisitions of Israeli companies can involve extensive negotiations with the OCS regarding the transfer of intellectual property and the amount of “royalties” to be paid. In addition, investment agreements and merger or acquisition agreements typically incorporate representations that the company is in compliance with the R&D Law and any undertakings towards the OCS.

8 It should be noted that this requirement for the payment of royalties to the OCS does not seem to violate the GPL. Sections 10 and 12 of the GPL only address the collection of royalties by the distributing entity, not the payment of royalties by the distributing entity for the right to distribute the licensed work. In addition, section 11 of the GPL only prohibits the payment of royalties to a “third party that is in the business of distributing software”, such as with regard to Novell's 2006 agreement to make royalty payments to Microsoft.

9 Section 19(b1) of the R&D Law provides that with respect to OCS-funded research that “[k]now-how … and any right deriving therefrom will not be transferred to another outside of Israel except in accordance with the provisions of section 19B.” Section 19(c) of the R&D Law also provides that the approval of the applicable committee of the OCS, as well as the satisfaction of certain other requirements, is required for the transfer of OCS-funded intellectual property within Israel.

10 Section 19(j) of the R&D Law provides that regulations shall be promulgated regarding the grant of licenses for the use of OCS-funded technology outside of Israel. No regulations have as of yet been enacted pursuant to this provision. As such, it can be difficult to obtain authorization from the OCS for licensing transactions.

11 For an English translation of the OCS letter setting forth its position, see http://www.moit.gov.il/NR/rdonlyres/C4BD683E-D888-4929-B819-FBA809C3A179/0/nemanuteng.doc

Conflicts

The requirements of the GPL clearly conflict with any obligations a company may have under the R&D Law or pursuant to any separate contractual undertaking to the OCS. Before describing the conflicts in more detail, it should be emphasized that the OCS has not expressed any public position nor promulgated any regulations regarding the effect of the R&D Law on FOSS. In informal conversations, however, individuals at the OCS have stated that under appropriate circumstances – for example, as part of an economically justified dual-licensing strategy – the office may consent to the GPL-licensing of funded software. Even so, in the absence of such consent, the OCS does seem to take the position that the R&D Law prohibits the release of grant funded software under the GPL.

Several conflicts may arise between the GPL and the requirements of the R&D Law. Of course, the most obvious tension between the two is the GPL's requirement that the source code of distributed works be disclosed. As noted, the position of the OCS is that funded source code may generally not be transferred without its consent. As such, recipients of OCS funds may not be permitted to provide source code under the GPL, or combine their software with GPL-licensed programs in a manner that would require disclosure of their own software code. Closely related to this conflict are the restrictions imposed by the OCS on the licensing terms of released source code. The GPL not only requires that distributors provide source code, but commands that this code be provided under the GPL's own licensing terms. The provision of source code pursuant to a more restrictive set of licensing terms is a violation of the GPL's requirements. As noted above, the OCS imposes substantial restrictions on the licensing terms pursuant to which source code may be released. These two conflicts would seem to clearly preclude use of the GPL and GPL-licensed software for release by OCS funded companies.

Some conflicts between the GPL and the R&D Law may be less obvious, though no less problematic. Such conflicts may even restrict an entity's freedom to apply the GPL to software that was not directly developed with OCS funds. Section 11 of the GPL, for example, provides that any contributor to a GPL-licensed program grants a “non-exclusive, worldwide royalty-free” patent license to all patents owned or controlled by the contributor.[12] This broad patent license can conflict with a party's statutory obligations under the R&D Law: as described above, the interpretation of the OCS is that licensing arrangements may also be restricted by law. As such, OCS-funded entities may not be legally able to grant the patent license required by the GPL with respect to patents where the technology underlying the patent was funded with OCS grants. As such, even if specific source code was not funded with OCS grants, an OCS-funded entity may not be permitted to release it under the GPL if that entity owns or controls other relevant patents that were developed with OCS funds.[13]

12 Section 11 defines “control” as the “right to grant patent licenses in a manner consistent with the requirements” of the GPL. As such, under the GPL, an OCS-funded entity which also licenses third party patents would not be required to grant licenses to such patents if it is legally unable to do so according to the R&D Law. The GPL, however, contains no similar exception for owners of patents, who are required to grant the Section 11 patent license in respect of all patents to which they hold title.

13 While this article focuses on the restrictions that the R&D Law imposes with respect to the GPL itself, it should be noted that the inability of an OCS-funded entity to grant patent licenses may affect the ability of such entity to contribute code to any open source software project. The contribution agreements required by many open source projects contain express patent license provisions which an OCS-funded entity may not be able to grant. See, for example, Section 3 of the standard Apache Software Foundation Software Grant and Corporate Contributor License

OCS-backed companies may even be restricted in their ability to link their own proprietary programs with GNU Lesser General Public License (LGPL) -licensed programs. Section 4 of the LGPL provides that the conveyor of a program which uses an LGPL-licensed library must convey its own software in a form and under terms that allow “modification of the portions of the Library contained in the Combined Work, and reverse engineering for debugging such modifications.” Section 4 may also require that the program of the OCS-funded entity which uses the library be provided “under terms that permit the user to recombine or relink” this program with a modified version of the LGPL-licensed library.[14] As noted above, the OCS restricts the licensing terms which may be applied to source code developed with OCS funds. Indeed, the OCS is typically especially sensitive about licensing terms that allow for modification or development. As such, recipients of OCS funding may be unable to provide their proprietary software under the license terms required by Section 4 of the LGPL.

Liberty or Death

The previous section detailed several possible conflicts that may arise when an OCS-funded entity wishes to distribute a work pursuant to the GPL. These conflicts impact different types of obligations under the GPL. The first conflict involved statutory restrictions on the freedom of an OCS-funded entity to provide source code with respect to OCS-funded technology. This conflict involves a clear legal restriction on the ability of the OCS-funded entity to comply with the core purpose of the GPL. The receipt of source code is central to the GPL: a downstream licensee that cannot receive the source code of licensed works will not be in any position to exercise its freedom to modify and redistribute GPL-licensed software. The second and third conflicts raised by the R&D Law, however, involve restrictions on the granting of legal license rights (source code and object code pursuant to GPL licensing terms and the GPL patent license) rather than a tangible item (the actual source code). The fact that a distributor is restricted from granting the required patent license, for example, may never have any actual practical effect on the recipient of any GPL-licensed source code. The fourth potential conflict relates to the inability of an OCS-funded entity to grant a right under the LGPL, a right that seems less central to the goals of FOSS than the obligations listed above. The fourth conflict only limits a licensee's legal right to reverse-engineer programs that make use of LGPL-licensed works, but does not restrict the freedom to use the LGPL-licensed work itself. Again, the fact that a distributor is restricted from granting such permissions may never have any practical effect on the recipient of the LGPL-licensed code.

Does Section 12 of the GPL differentiate between the restrictions listed above? On a purely literal level, the language of Section 12 applies to a licensee's inability to comply with its “obligations” under the license. It is possible to interpret this provision as applying only to a licensee's inability to comply with the tangible obligations of the GPL (providing source code) and not its less concrete requirements (the grant of intangible legal rights). This interpretation, however, would seem to undermine the purpose of the GPL, as Section 12 would not be triggered as long as the OCS-funded entity technically complied with its obligation to provide source code, even if it was

Agreement, *available at* http://www.apache.org/licenses/cla-corporate.txt.

14 This latter requirement would apply when distributing the LGPL-licensed library statically linked to other code. Alternatively, Section 4(d)(1) of the LGPL may allow distributors to dynamically link to the LGPL-licensed library with “a suitable shared library mechanism,” as that term is defined in the license.

unable to grant the necessary legal rights to make use of the code. As such, it seems more likely that Section 12 provides that that the inability of an entity to comply with any obligations of the GPL –including the inability to grant an intangible right such as a patent license –completely precludes such entity from distributing GPL-licensed code in any manner. In addition, it should be noted that Section 12 does not grant the restricted entity the choice to disregard its alternative statutory or contractual obligations and instead comply with the obligations imposed by the GPL. The blunt language of Section 12 seems to provide that the simple existence of any restrictions on the ability of an entity to comply with the license completely bars the entity from conveying any licensed code.[15]

How would Section 12 be interpreted under Israeli law?[16] As with other legal systems, Israeli law provides that a contract which contravenes applicable law is void.[17] At the same time, and again as with other legal systems, Israeli law does provide for the severability of contracts, provided that the contracting parties have agreed to such severability.[18] According to the principle of severability, a court may enforce the lawful part of a contract while ignoring any unlawful parts. Section 12 of the GPL seems to clearly provide that the drafters of the GPL did not intend that the license be severable in this regard: according to the language of Section 12, any restriction on a potential conveyor's ability to comply with any condition of the license seems to mean the loss of all rights to convey the licensed work, regardless of whether the conveyor may comply with other conditions of the license. Of course, courts typically have broad latitude in interpreting contracts, and it is quite difficult to predict how a court would approach tensions between the GPL and conflicting law. Nevertheless, the drafters of the GPL seem to have made clear what they perceive the preferred outcome of any such conflict to be. [19]

15 But see Lawrence Rosen, Open Source Licensing: Software Freedom and Intellectual Property Law 134 (2005) (interpreting the parallel provision in version 2 of the GPL to mean that "it will take more than the threat of patent infringement to invoke this provision. An actual patent dispute has to be alleged and either litigated or settled"). This interpretation of version 2 of the GPL may be correct with respect to obligations imposed as a result of patent litigation. The broader language of version 3 of the GPL, however, as interpreted in the context of a clear legal restriction on complying with the obligations of the GPL, would seem to imply that the mere existence of statutory restrictions (even without a court order that requires the party to comply with these restrictions) would be enough to invoke the "Liberty or Death" clause.

16 While this Article focuses on the effect of Section 12 under Israeli law, it is possible that suits regarding the conflict between the GPL and the Israeli R&D Law would be brought in non-Israeli courts. For example, a suit to obtain an injunction to prevent a foreign licensee from using OCS-funded software pursuant to the GPL may need to be brought in the jurisdiction of such foreign licensee. Such cases would raise complex questions of illegality under foreign law.

17 See Section 30 of the Law of Contracts – 1973 (the "Law of Contracts"). This discussion skirts the question of whether the GPL should be considered a contract or a license. In any event, the principles for interpretation of licenses under Israeli law likely does not differ very much from the principles for the interpretation of contracts. See TONY GREENMAN, ZEHUYOT YOZRIM, "Copyright", 2nd ed. 2008, at 573.

18 Sections 19 and 31 of the Law of Contracts provide that an illegal contract may be severable. Gabriella Shalev, Contract Law 268 (1990), notes that the question of whether a particular contract is severable depends on the parties' intent.

19 This article has focused on the interpretation of the GPL. Of equal practical importance, however, are the consequences to an OCS-funded company that has violated its statutory obligations to the OCS by granting licenses or source code pursuant to the GPL. The R&D Law does not expressly address the effect of licenses (or other rights in intellectual property) granted in violation of the law. For example, the R&D Law does not expressly provide that a license granted in violation of the R&D Law should be "unwound." Nevertheless, such contracts may be deemed void under Section 30 of the Contracts Law. See *supra* text accompany note 17. In addition, section 45 of the R&D Law does provide that violations of the law may result in the requirement to return OCS grant money plus interest, and may preclude a violator from obtaining any further grant money. In addition, the OCS may potentially attempt to obtain additional amounts from the OCS-funded company in respect of any economic benefit received from the grant of the prohibited license. While licenses under the GPL will generally be granted at no or minimal cost, Section 19B(6)

What happens if the licensed work is conveyed in violation of Section 12? First, such distribution would result in the termination of all rights under the license. Section 8 of the GPL expressly provides that attempts to “propagate or modify” a work in violation of the license “will automatically terminate your rights”. On the one hand, Section 12 would not seem to affect the rights of any downstream recipients of the licensed work. Section 10 of the GPL provides that “[e]ach time you convey a licensed work, the recipient automatically receives a license from the original licensors to run, modify, and propagate that work, subject to this License.” Section 10 does not differentiate between situations in which the conveyor has or does not have the rights to distribute the licensed work. In addition, Section 8 provides that “[t]ermination of your rights under this section does not terminate the licenses of parties who have received copies or rights from you under this License.” As such, it seems that any actual downstream recipient continue to receive all applicable rights under the GPL, even if Section 12 prohibits the distribution of that work by a particular recipient. On the other hand, and especially with respect to the patent licenses granted under Section 11 of the license, it is difficult to see a local court enforcing a license granted in violation of applicable law.

Conclusion

One of initial questions raised by this article concerned the operative purpose of Section 12. The discussion has shown that Section 12 operates as an anti-severability clause. In other words, according to Section 12 a court may not pick and choose among the distribution rights granted by the GPL and the conditions imposed on the exercise of those rights. If any condition is unenforceable, whether as a result of statute, contract or judicial decision, then no distribution rights are granted under the license. The effect and interpretation of severability and anti-severability clauses will obviously vary depending on the jurisdiction and the specific facts and circumstances. In Israel at least, a court will generally give effect to the wishes of the parties concerning the severability of the provisions in an agreement.

It may be more appropriate to call Section 12 a **limited** anti-severability clause, since it only addresses the right of a licensee to distribute a licensed work, but does not demand that the right to use a work be restricted together with the loss of any distribution right.[20] Section 2 of the GPL allows the use of a licensed work “so long as the license otherwise remains in force.” As such, so long as a user has actually complied with the terms of the GPL (and not distributed a licensed work without complying with the applicable conditions), the effect of Section 12 should not be to make a user lose its rights to run or otherwise use a licensed work.[21]

grants the OCS broad powers to recalculate due amounts based on any actual economic benefit gained by the OCS-funded company by granting the license. In addition, it should definitely be noted that Section 47A of the R&D Law provides that individuals who transfer know-how in violation of the R&D Law can be subject to three years imprisonment.

20 Similarly, the loss of distribution rights pursuant to Section 12 in one specific situation will not lead to the loss of distribution rights in other factual situations in which Section 12 is not implicated. Section 17 of the GPL provides an addition example of how the Section 12 anti-severability clause does not apply to all rights under the license. Section 17 provides that if the disclaimer of warranty and limitation of liability provisions in the license “cannot be given local legal effect according to their terms, reviewing courts shall apply local law that most closely approximates an absolute waiver of all civil liability in connection with the Program, unless a warranty or assumption of liability accompanies a copy of the Program in return for a fee.”

21 This understanding of Section 12 as a “limited” anti-severability clause may help in interpreting Section 7 of version

The GPL, as well as other open source licenses, are somewhat unique as legal documents, as they are in broad use throughout the world, and yet may not specify that they are governed by the law of any specific jurisdiction.[22] Such licenses present the possibility of being interpreted differently in various jurisdictions, as well as the possibility of conflicting with the local law of any number of jurisdictions. This article, in reviewing a specific conflict that may arise between the GPL and local Israeli law, has highlighted the GPL's approach to such conflicts, as well as potential questions that such approach may raise. As with other issues raised by the GPL, resolving these questions of interpretation may need to wait for the decision of a court faced with concrete facts and circumstances.[23]

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2.0 of the GPL, which contained both an earlier version of Section 12 (which this article has interpreted as an "anti-severability clause") as well as a standard severability clause. See *supra* text accompanying note 4. As with our understanding of Section 12 in GPLv3, the effect of the two somewhat contradictory clauses in GPLv2 may be to withhold rights of distribution even while continuing to grant rights of use.

22 See Free Software Foundation, GPLv3 Second Discussion Draft Rationale, n.70, available at gplv3.fsf.org/gpl3-dd1to2-markup-rationale.pdf (stating that choice of law clauses "are typically found in license documents drafted from a contract-oriented perspective" but are in the opinion of the Free Software Foundation incompatible with the GPL).

23 Other commentators have pointed out other possible conflicts between the GPL and local law. Such conflicts would of course also raise questions under Section 12. Rosen, *supra* note 12 at 132, points out that the GPLv2 requirement that licensed works be distributed "at no charge" could raise another potential conflict between the GPL and local antitrust law. Section 10 of GPLv3 imposed a similar requirement that conveyors may not "impose a license fee, royalty, or other charge for the exercise of rights" under the license. But see *Wallace v. International Business Machines,* 467 F.3d 1104 (7th Cir. 2006) (stating that "[t]he GPL and open-source software have nothing to fear from the antitrust law"). As the requirements of antitrust law can be vague and hard to apply without the guidance of a court decision, especially in the context of open source licensing, it would be difficult to pronounce how Section 12 should be interpreted in these circumstances.