## Killing Mi Software with EUR-Laws\*

IETF118 Prague, Late Night "Bad Attitude Pechakucha", November 8, 2023

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#### Internet Systems Consortium



(\*) NOTHING IS FINISHED YET. The Gang in Brussels are arguing about these now. (†) These comments are personal and should not be attributed to anyone I know, to anyone who knows me, or to anyone else for that matter. If you keep reading these notes, you risk injuring your eyesight. All terms and conditions stated herein are governed by and shall be construed in accordance with the laws of England (not including its body of private international law).



#### Not experienced

# Sort of experienced

## Hugely experienced

### Over the course of 30 Years...

 $Experience \propto \frac{1}{Hair_{DARKNESS}}$ 

Experience  $\propto$  Forehead<sub>AREA</sub>

The Cyber Security Body Of Knowledge www.cybok.org CyBOK

IE mante.

#### Law and Regulation Knowledge Area Version 1.0.2

**Robert Carolina** 

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# And now for something completely different

Rob Gen'l Counsel

ISC

1100

Jeff

accessories

u ante lu ante lu ante lu antello ante lu

No all No all No all No all No all No all No all

and DNS

I sell DNS

give away

Genuine picture. Obviously from "King of the Hill," and something that took way too long to make using the rudimentary tools under my control. Mike Judge is a genius.

Problems	Solution
<ul> <li>Functionality has drifted</li> <li>from "tangible products" (e.g., cars)</li> <li>to "digital products"</li> </ul>	The EU declares
<ul> <li>(e.g., software that actuates car controls)</li> <li>Most human beings (<i>especially</i> &lt; +2 σ)</li> <li>buy functionality, not security</li> </ul>	software is a "product" for purposes of:
<ul> <li>cannot distinguish good &amp; bad software</li> <li>Too many software vendors have too little incentive to invest in making software more secure (or to pass the laugh test)</li> </ul>	<ul> <li>product conformity regulation, and</li> </ul>
George "Lemon Tree" Akerlof predicted this type of outcome in 1970*	• product liability law

<sup>\*</sup> Akerlof, George A. (1970). "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism". Quarterly Journal of Economics. The MIT Press. 84 (3): 488–500. doi:10.2307/1879431. If you have not heard of this before, I am shocked. It's a helpful way to describe a type of market failure that is common in the field of cybersecurity and information technology more generally. You should read more. Just not these notes.

New law	What it does
Cybersecurity Resilience Act (CRA)	<ul> <li>Software subject to conformity assessment (CE Marking)</li> <li>Procedural, informational, and reporting obligations</li> </ul>
Product Liability Directive (PLD)	<ul> <li>Make software manufacturers* liable for defective software</li> <li>Does not apply to source code† as such</li> </ul>
For both	<ul> <li>Obligations attach to those who place product "on the market"</li> <li>Includes giving software away for free, if something else is in play – like accepting some money to help someone use the software you gave away for free</li> <li>Framework "inspired" by The Blue Guide</li> </ul>

(\*) If you shove software out into the world with your name or logo on it, you are probably a manufacturer. (†) There is no definition for "source code" because Of Course Not. The people who wrote this do not have a clear idea of how the distinction between source and executable gets blurred. But I am getting a little bit ahead of myself here. Stay tuned.

### All Hail, the Blue Guide!



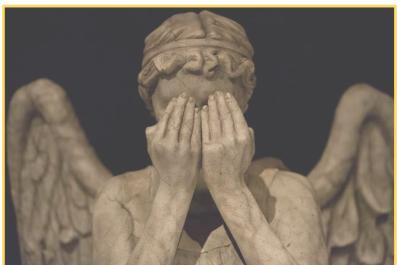
Published: 2014 No of pages: 134 COUNTIF("software") = 1 COUNTIF("open source") = 0

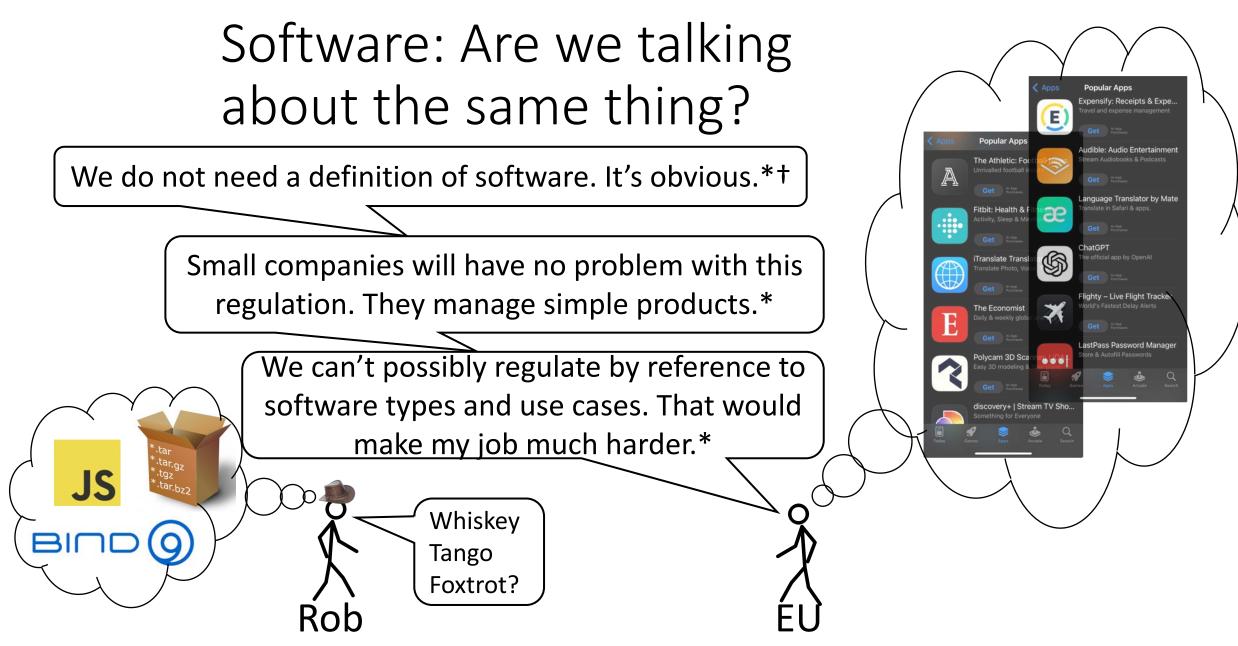
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	(Information)	
INFORMATIO	N FROM EUROPEAN UNION INSTITUTIONS, BODIES AND AGENCIES	, OFFICES
	EUROPEAN COMMISSION	
1	COMMISSION NOTICE The 'Blue Guide' on the implementation of EU product rules 2022	
	(Text with EEA relevance)	
	(2022/C 247/01)	
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	plication (EEA EFTA states, Overseas Countries and Territories (OCTs), Turk	

Published: 2022 No of pages: 152 COUNTIF("software") = 13 COUNTIF("open source") = 0

- Does it exempt charities?
- Is there a careful & thoughtful discussion on re-classifying software as a product?







(\*) Actual statements by actual civil servants. This cowboy hat photo by Unknown Author is licensed under <u>CC BY-NC 4.0</u>. Unofficial JavaScript logo by Chris Williams, from <u>GitHub logo.is</u>, under <u>very permissive</u> licensing (WTFPL). .TAR illustration from "The Ultimate Tar Command Tutorial with 10 Practical Examples," The Geek Stuff, April 26, 2010. (†) Spoiler alert: this civil servant was in Washington, not Brussels.

## **CE** Conformity assessment

You can self-assess your software.

Hurray! I will do that.

Rob

... unless your product is a critical dependency, like that famous Random Person in Nebraska.\*

Then you must either self-assess against Formal European Standards, or go out for third party audit and certification

I'll use the standards, thank you.

They don't exist yet. But we are sure they will be created quickly.+

(\*) This is an example of what theatre folk call Chekhov's Gun. That's Anton Chekhov, not Pavel Chekov. Expand your horizons. (†) Actual statements by actual civil servants. Other civil servants clearly disagreed and the list of things requiring heightened assessment requirements was reduced dramatically in a recent draft. <u>This cowboy hat photo</u> by Unknown Author is licensed under <u>CC BY-NC 4.0</u>. <u>This Photo</u> of the CE Mark by Unknown Author is licensed under <u>CC BY-SA</u>

Arriving soon: security assessment standards for DNS software

ETS

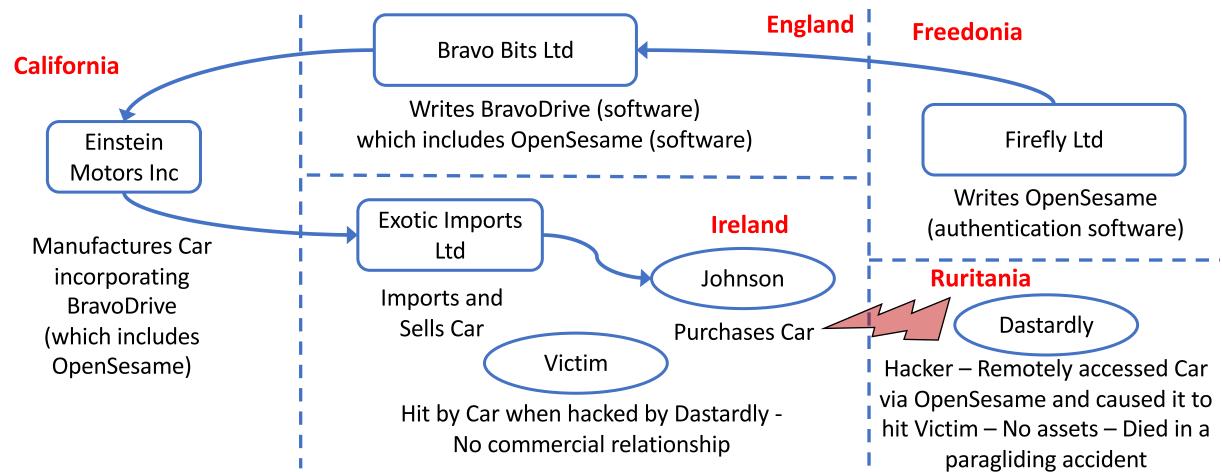






The snail picture was catalogued as CC material without any further information. Obviously the ETSI logo is property of ETSI. The inset photos are from an ETSI promotional video. In an interesting coincidence they were filming the promotional video the same week that I was delivering an address at ETSI Security Week in 2019. So yes, that's me at the podium talking to delegates for an hour about strict product liability for digital products. Would you like to see some of the slides I used? I hope so because they are coming up next. Funny how the world works, isn't it. You have definitely reached the point of diminishing returns on this note.

New Product Liability Directive (PLD) example: Hypothetical supply chain



I do not have any rights clearance information here because I drew this diagram myself. These footnotes could become the source of audience anxiety syndrome. An early performance by the Blue Man Group pointed out that we all suffer from information overload and a fear of missing out. This is a note you could easily have ignored without missing anything of significance. Let that be a lesson to you.

#### Hypothetical lawsuit: the law today

	Negligence (common law)			Strict Liability Defective Product (EU 85/374)		
If Victim brings a lawsuit in Ireland against	Duty of care to victim (foreseeable, proximity)	Acted unreasonably (negligently)	Liable	Supply of product	Lacks reasonably expected safety	Liable
Johnson	YES	No	n/a	Not a supplier	n/a	n/a
Exotic Imports	YES	No	n/a	YES - car	YES	YES
Einstein Motors	YES	No	n/a	YES - car	YES	YES
Bravo Bits	Probably yes	Probably no	Probably no	No - software	n/a	n/a
Firefly	Maybe?	Maybe??	Maybe???	No - software	n/a	n/a
Law of strict liability for defective products makes manufactures and component suppliers financially						

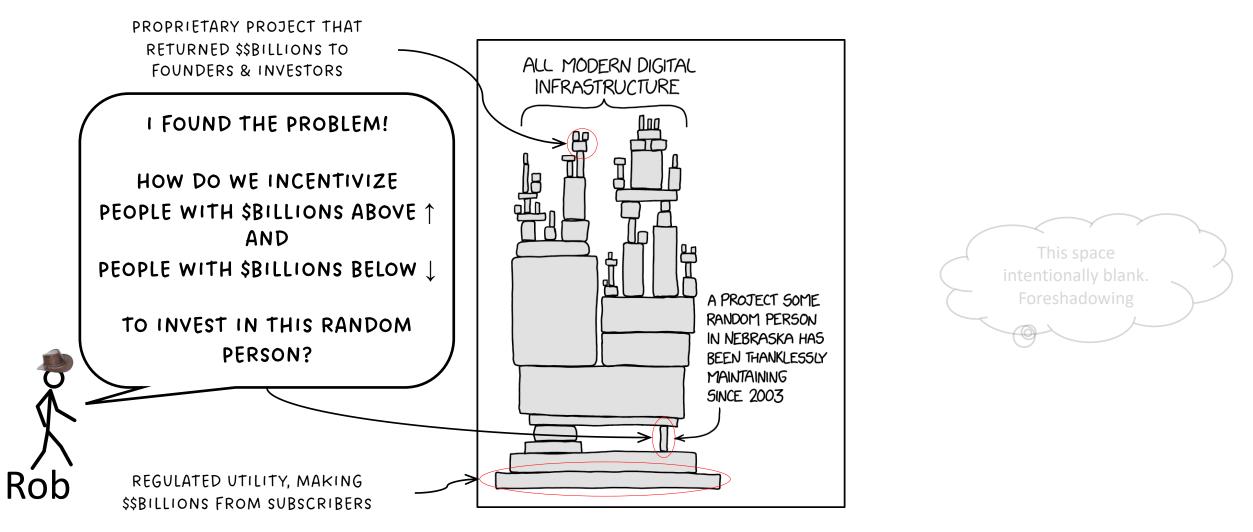
responsible for dangerous products they supply that hurt people – they are efficient cost spreaders.

Believe it or not, I used a previous version of this slide to present these same ideas to a meeting of security experts at ETSI Security Week back in 2019. There's even a brief video of me delivering that talk in an ETSI promotional video they were making that week. I've placed a picture of that into this presentation, if you know where to look. But the reality is that you were probably off spending your time here reading the contents of the grid above.

### Hypothetical lawsuit: after transposition of new PLD in 2025-26?

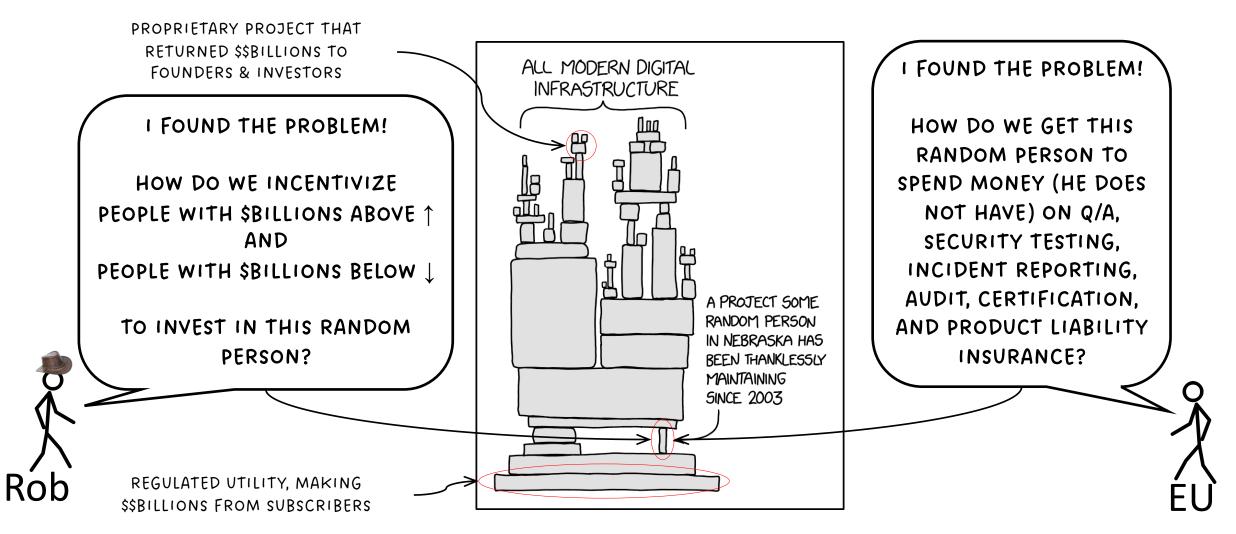
	Negligence (common law)			Strict Liability Defective Product (EU PLD?)		
If Victim brings a lawsuit in Ireland against	Duty of care to victim (foreseeable, proximity)	Acted unreasonably (negligently)	Liable	Supply of product	Lacks reasonably expected safety	Liable
Johnson	YES	No	n/a	Not a supplier	n/a	n/a
Exotic Imports	YES	No	n/a	YES - car	YES	YES
Einstein Motors	YES	No	n/a	YES - car	YES	YES
Bravo Bits	Probably yes	Probably no	Probably no	YES-software	<u>YES</u>	<u>YES</u>
Firefly	Maybe?	Maybe??	Maybe???	YES-software	<u>YES</u>	YES
New law would <b>expand strict liability</b> and make "manufacturers" and/or "importers" of <b>software</b> financially responsible for dangerous software they supply that hurts people.						

#### Describing the open source problem



R Munroe, "Dependency," XKCD #2347. This work is licensed under a Creative Commons Attribution-NonCommercial 2.5 License. But you knew that already, didn't you. This may be the most famous comic in the history of XKCD, AND you have not been asleep for the past 10 years. This is what law school does to a person. You produce citation notes just because that's what you do. I hope you can you still see at this stage. What you may not know, is that the name of the Random Person is Pavel Chekov. No relation. Oh, and This cowboy hat photo by Unknown Author is licensed under CC BY-NC 4.0

#### A minor difference in approach



R Munroe, "Dependency," XKCD #2347. This work is licensed under a Creative Commons Attribution-NonCommercial 2.5 License. But you knew that already, didn't you. This may be the most famous comic in the history of XKCD, AND you have not been asleep for the past 10 years. This is what law school does to a person. You produce citation notes just because that's what you do. I hope you can you still see at this stage. What you may not know, is that the name of the Random Person is Pavel Chekov. No relation. Oh, and This cowboy hat photo by Unknown Author is licensed under CC BY-NC 4.0

### The Open Source Community



Why there will be no general exemption from these laws for opensource software

- "What makes you so special?"
  - "If your software screws up, do we not bleed?"
  - "None of you can explain why you believe you are in the same boat."
- "Besides, no matter what else happens we need to regulate People in Hats and people who are sort of like People in Hats
  - and people who might be on their way to wearing Hats
  - or distributing stuff that uses stuff made by people who wear Hats."
- BUT, we might exempt a few of the Truly Worthy... if you can convince us that you truly are. Worthy, that is.

### The Open Source Community 2.0

lam

most

definitely

NOT

**Spartacus** 

HE is

Spartacus!

Yup, that is

Spartacus!

Spartacus, my man!

> It's the Dude with THE HAT!

Still picture from "Spartacus," directed by S. Kubrick (1960). I'm going to suggest that any combination of "fair use" and/or "fair dealing" and/or "parody" are sufficient reasons to use this image. When I started lecturing, I used only words so I never thought I would need to do rights-clearance for my presentations. But hey, the Pechakucha Police want images more than words, so I need to find memes that work. Here's something I didn't know. Apparently, Spartacus was a meme used by the Communist Party to celebrate the rise of the proletariat. If you are the first person to shout out to me "Rob, You Are Spartacus" during this presentation I will award you ten Euros for your fast reading provided that you also comply with the additional terms & conditions stated herein. Back to the communist thing. I'm sure you appreciate that I am NOT trying to celebrate the Bad Old Days of Communism. I just wanted to re-create a famous moment from a big budget Hollywood film and then turn it upside down. But seriously, reading these notes while trying to listen to a lecture will confuse you if you are not careful. As a condition of the award stated, you must actually shout the negative of the statement previously quoted. Reading these notes may help you significantly.

# NEXT:

- Biden Administration Cybersecurity Policy
- Software vendors need to be made liable for bad software

(But HOW?)



- Team USA is taking a more cautious approach
- Asking for considered opinion from academia on HOW to allocate liability for bad software.
- Probably no new law before 2025
- Will it matter after Europe finishes it rush to... whatever?

