

FOSS Must Be Discrimination Free

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FOSS Disclaimer

Slides: berkus.org/pdf_presos/discrimination_free.pdf



Discrimination



Discrimination

1. a. prejudiced or prejudicial outlook, action, or treatment



Discrimination

2. the quality or power of finely
distinguishing

OSD #5

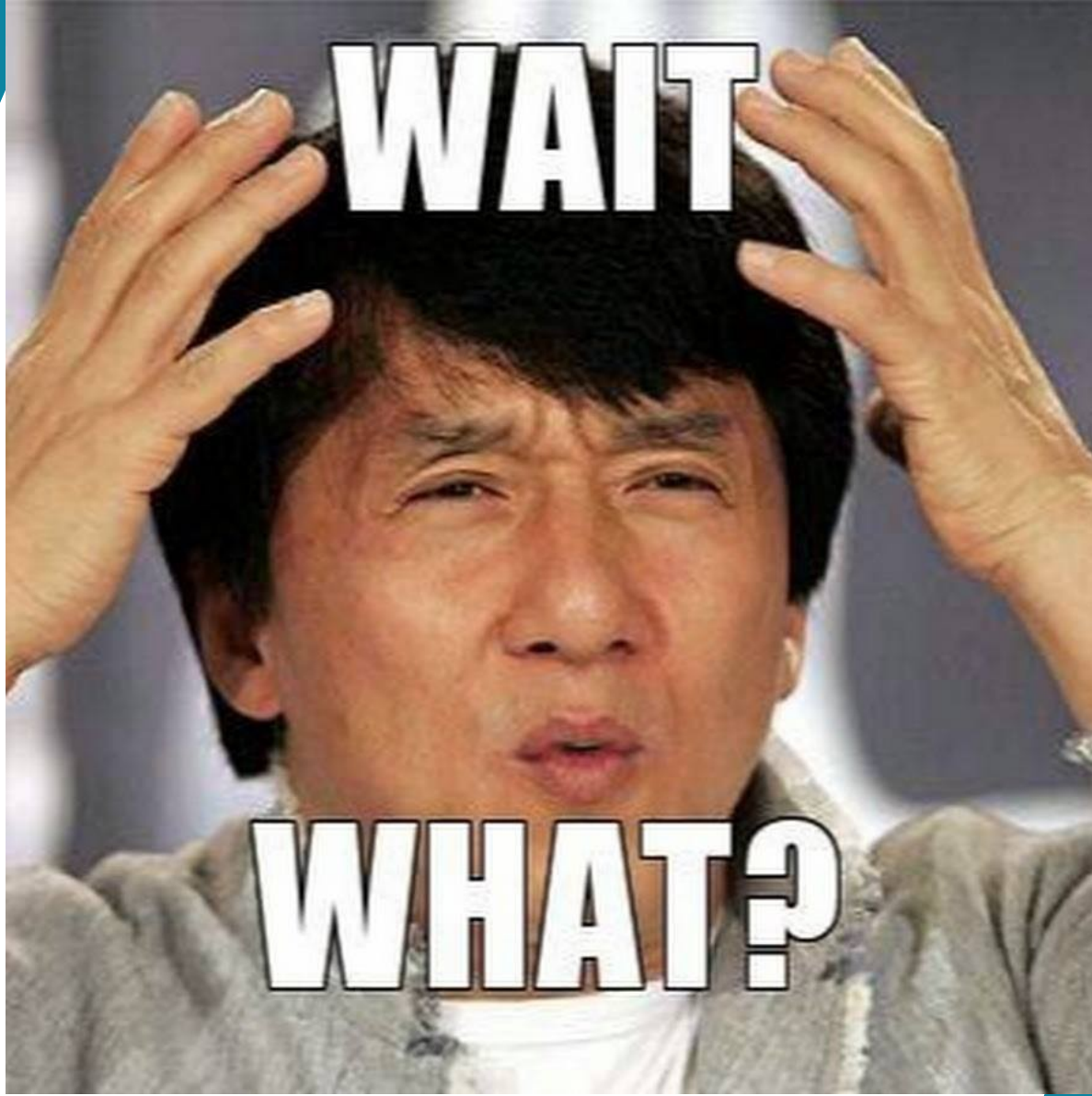
No Discrimination Against Persons or Groups

The license must not discriminate against any person or group of persons.

OSD #6

No Discrimination Against Fields of Endeavor

The license must not restrict anyone from making use of the program in a specific field of endeavor. For example, it may not restrict the program from being used in a business, or from being used for genetic research.



WAIT

WHAT?

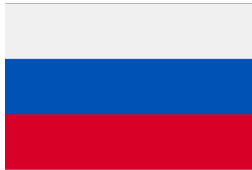
Why can't I keep my software away from:



Crime



War



Russia



Amazon

The background consists of a white central area with teal-colored geometric shapes at the top-left and bottom-right corners. The teal shapes are composed of several triangles and polygons, creating a modern, abstract design.

Many Have Tried

Peaceful OSL

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Hippocratic License

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3.1. The Licensee SHALL NOT, whether directly or indirectly, through agents or assigns:

3.1.1. Infringe upon any person's right to life or security of person, engage in extrajudicial killings, or commit murder, without lawful cause (See Article 3, *United Nations Universal Declaration of Human Rights*; Article 6, *International Covenant on Civil and Political Rights*)

3.1.2. Hold any person in slavery, servitude, or forced labor (See Article 4, *United Nations Universal Declaration of Human Rights*; Article 8, *International Covenant on Civil and Political Rights*);

3.1.3. Contribute to the institution of slavery, slave trading, forced labor, or unlawful child labor (See Article 4, *United Nations Universal Declaration of Human Rights*; Article 8, *International Covenant on Civil and Political Rights*);

3.1.4. Torture or subject any person to cruel, inhumane, or degrading treatment or punishment (See Article 5, *United Nations Universal Declaration of Human Rights*; Article 7, *International Covenant on Civil and Political Rights*);

3.1.5. Discriminate on the basis of sex, gender, sexual orientation, race, ethnicity, nationality, religion, caste, age, medical disability or

License builder

Available modules (scrollable list)

- ☐ Fossil Fuel Divestment module
- ☐ Ecocide module
- ☐ Extractive Industries module
- ☐ Boycott / Divestment / Sanctions module
- ☐ Taliban module
- ☐ Myanmar module
- ☐ Xinjiang Uygur Autonomous Region module
- ☐ US Tariff Act module
- ☐ Mass Surveillance module
- ☐ Military Activities module
- ☐ Law Enforcement module
- ☐ Media module



But Why Not?

The Four Essential Freedoms

- **The freedom to run the program as you wish, for any purpose (freedom 0).**
- The freedom to study how the program works, and change it so it does your computing as you wish (freedom 1).
- The freedom to redistribute copies so you can help others (freedom 2).
- The freedom to distribute copies of your modified versions to others (freedom 3).

Free **are**
is ab **ting**
Use **om**

**AND YES
THIS MEANS
YOU!**

You are a User

Use, not just write



For every FOSS program you write, you use hundreds of others.

FOSS builds on FOSS



Every project builds on a pyramid of libraries, tools, APIs, and frameworks.



Legal Complications

“Usage” is not a copyright control

- Contract?
- Patent?

Other Complications

Time Marches On



1990

“No Apartheid” license

A version of the Berkeley License prohibits use by “the police or security forces of South Africa”



1995

ANC, Africans Rule SA

The police of South Africa now work for a democratic, multiracial government. But the license would still prohibit them, if used.

Enforcement?

“Users of this software may not commit murder.”

Definitions Unclear



Commercial

Nonprofits? Education?
Churches? Zero-profit sales?



Russia

Russian exiles? Dissidents?
Occupied territory?
Multinational businesses?



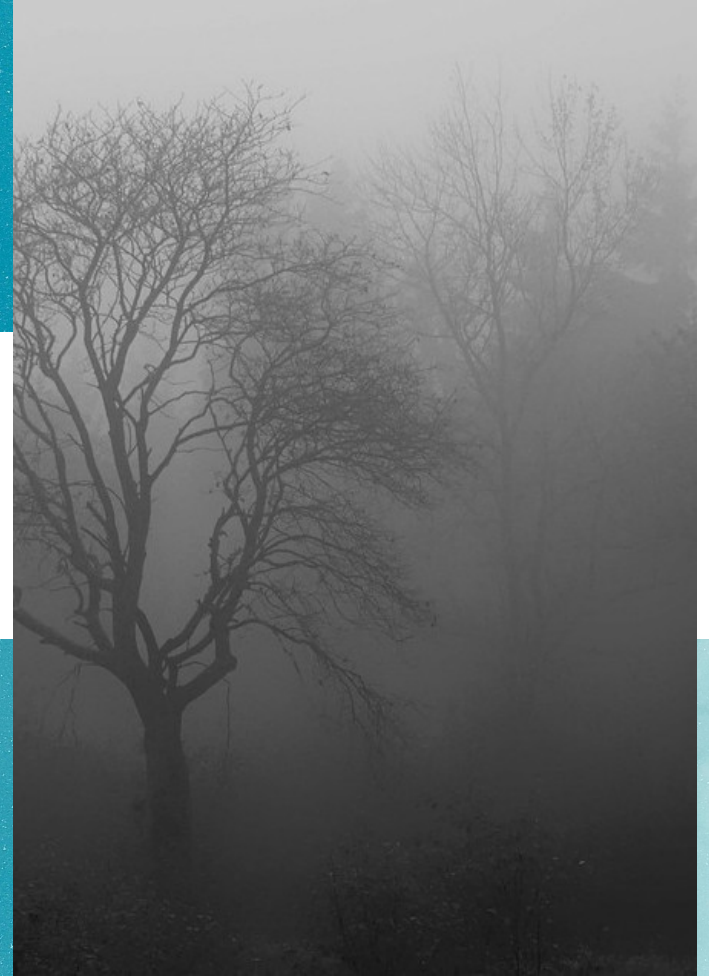
Web Service

Does it have to have a UI? An
API? What about mobile?



Harm

Violence? Insults?
Reputational Harm? Court-
ordered punishment?



It Gets Worse

- ☹ Usage Restrictions are interpreted broadly by courts
- ☹ Licenses are unilateral: no negotiation
- ☹ Regional interpretations



**See
You
In
Court**

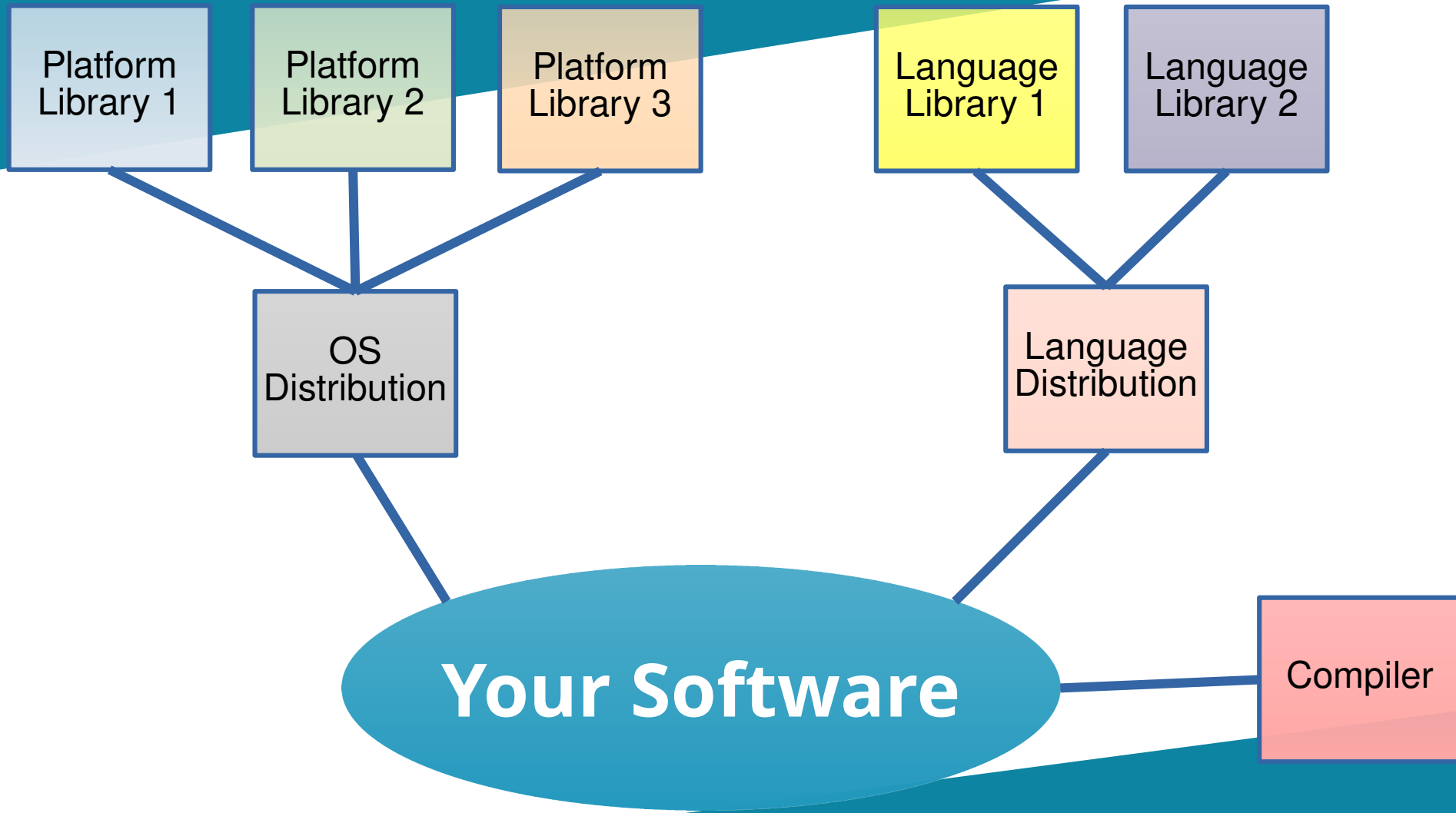
License Proliferation

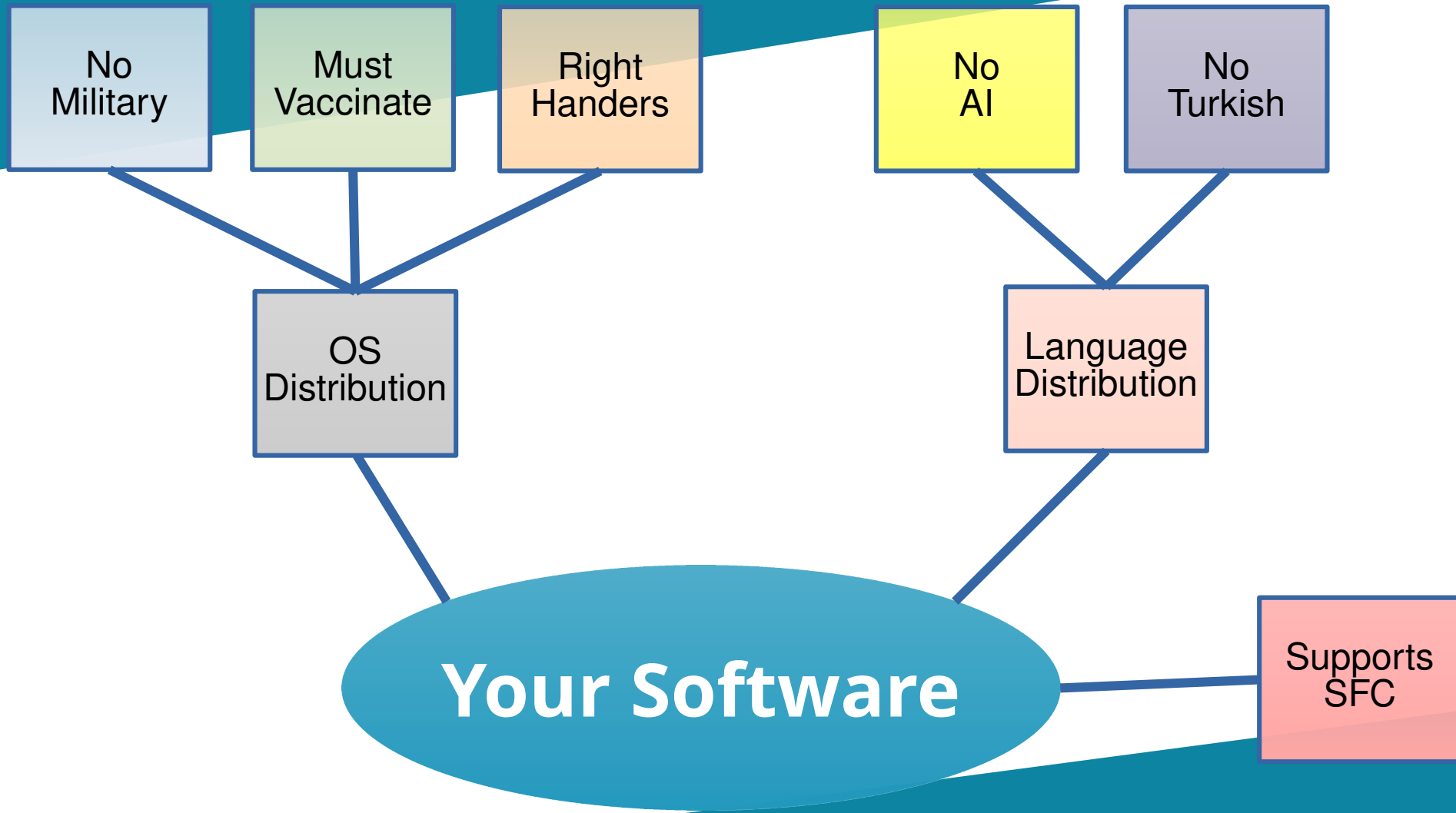
1999: OSI Founded

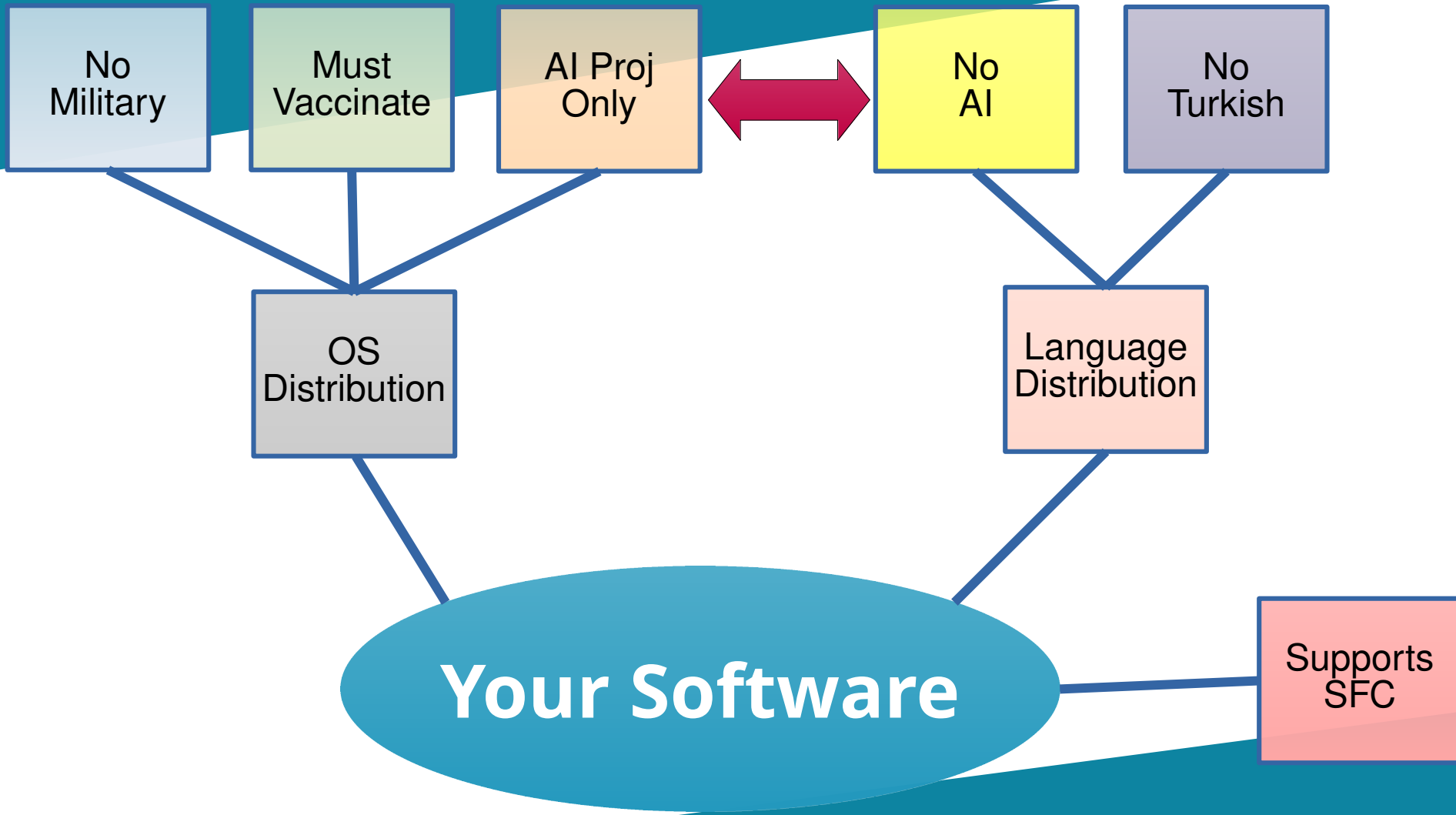
1999-2004: Write your own
license! Grow Open Source!

2005: Ooops, we have a
problem

2006-Now: License
non-proliferation







Discrimination Free

- ⊕ Discrimination clauses are Usage Restrictions
- ⊕ Usage restrictions are incompatible with User Freedom
- ⊕ They also create major legal and practical problems for software developers

Questions?

Slides: berkus.org/pdf_presos/discrimination_free.pdf

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