Controversy Swirls Around Changes in GPLv3

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While the move to block deals like the one between Novell and Microsoft will not prevent Novell from using existing GPLv2 software in its present versions, it could have a chilling effect on the company going forward.

As the Free Software Foundation prepares to release the third discussion draft on the GNU General Public License on March 28, the question being asked is whether the move to block future deals like the controversial one between Microsoft and Novell will forever doom the license.

Open-source evangelist and developer Bruce Perens confirmed to eWEEK on March 27 that GPLv3 does contain a provision that blocks deals like the one between Novell and Microsoft, and explained how it would work.

"If any entity that distributes the software arranges to protect a particular group from patents regarding that software, it must protect everyone. This mends the loophole exploited in the Novell-Microsoft agreement without being discriminatory or unfair," Perens said.

But Linux-Watch editor Steven Vaughan-Nichols, who has talked to many lawyers about this, reports that "their informal consensus is that getting clauses into GPLv3 that will block similar deals from happening in the future, while avoiding cutting legitimatize software patents uses off at the knees, is going to be almost impossible."

But, to Perens, therein lies the key difference between them and the FSF, which he says "doesn't really see any legitimate uses for software patents. They don't have to separate the good guys from the bad guys in that regard, because they think they're all bad guys.

"This is consistent with GPLv2, which comes with a patent license for everyone in the world to use your patented algorithm in any GPL software they like, once you distribute GPL code using that algorithm," Perens said.

Asked how he thought those large patent holders that were also active members of the open-source community, like IBM, HP and Novell, would react to that assessment, Perens said the question was whether GPLv3 would force them to give away so much of their patent rights that it - GPLv3 - would be untenable for them to use.

"I think it will allow them to preserve their accustomed patent rights regarding any software that isn't using the GPL, which is pretty much what they had before," he said.

So, for Perens, while this change will not prevent Novell from using existing GPLv2 software in its present versions, it could "freeze them in amber as an example of the state of software in early 2007, as the rest of the free software community and Linux distributions move into the future," he said.

It was also important that the GPL "continues to grow just to stand still. To freeze on one version would act to erode its protections over time," Perens said, citing as an example the loophole constructed by Novell and Microsoft attorneys, which will now be closed.

"That loophole was so new to us that the first two public drafts of GPL3 contained no provision to repair it," he said.

But ACT (the Association for Competitive Technology), which has previously been accused of being an association founded and cultivated solely to protect Microsoft's interests in Washington, views the issue differently.

ACT expects the draft to include language to "attack" patent deals like the one recently struck by Microsoft and Novell. Additionally, the new draft is expected to force TiVo, cell phone makers and other device companies that use open-source software to allow the "hacking" of those specific devices, and to continue to provide services and warrantees for the hacked devices.

"The draft has evolved over time, but GPLv3 is still clearly designed to build unscalable walls between open-source and proprietary software. The rest of the world is designed on making software more interoperable, but - FSF executive director - Richard Stallman and the FSF is still clearly focused on ideology rather than practical concerns of consumers," ACT executive director Morgan Reed told eWEEK.

"The drafting process has been very secretive up to now. It's our prediction that the draft will target specific companies and business models that do not live up to Richard Stallman's 'four freedoms'," Reed said. "We expect that Novell, Microsoft, TiVo and all the phone manufacturers who use Symbian will all find that this new draft makes it very difficult, if not impossible, to work with the GPLv3."

In the case of Novell and Microsoft, ACT expects the new draft will prevent open-source software distributors from giving their customers the certainty they are clamoring for over intellectual property issues.

"The new provision in this regard is designed to prevent software patent holders from providing a partner's customers with IP indemnification by forcing them to indemnify all downstream users," Reed said.

But what Reed thinks is most telling is the fact that the Linux community and leadership has rebelled against this latest draft.

"Linux products have really pioneered cooperation between proprietary companies and the open-source community. Their comments on this draft will be most telling," he said.

For his part, Perens defends GPLv3, saying that much of the talk about whether it goes too far to be acceptable to businesses, or whether the Linux kernel developers will ever switch to it, is based on a poor understanding of the GPL3 terms.

In a recently published article, Perens argues that "confused objectors to GPLv3 state that it won't allow the Linux kernel to be used on a system that implements DRM, and that GPL3 will compel manufacturers to give away their keys. If Linus Torvalds and the kernel developers still believe this, they're wrong," he said.

The intent of GPLv3, and most other free software licenses, was to give users the right to modify the covered software.

"GPL version 3 takes more trouble than other licenses to make sure that this right actually works with embedded systems. It essentially trades the makers of those systems the right to base their devices on our great GPL software, in exchange for the consumer's right to make that hardware run new and innovative programs that weren't envisioned by its manufacturer," Perens said.

GPLv3 also does not prohibit DRM, and does not require that the DRM be insecure or unreliable, he said, adding that what it does require is that the DRM must not break the GPL software or lock it down, and must continue to work to play media if the GPL software is modified.

As for the argument that the current GPLv2 is good enough, Perens said that the renaissance of microprocessors, software, the Web and digital media has resulted in many changes to copyright, patents, the nature of consent, contracts, tear-open licenses and copyright permissions.

"And there have been many trials over those years that added interpretation to laws that GPL 2 depends upon. As the law changes, the GPL must change to keep up with it, or it will become increasingly unenforcable," Perens said.

Regarding whether the Linux kernel team is likely to move to GPLv3, Perens remains optimistic. "Going by history, I think that we could wait one or two years to see the kernel team see fit to switch to GPL3. Even if they don't, so many other important projects will switch to GPL3 that it is sure to be an important factor in our future lives," he said.

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