

License Defamation

by Lawrence Rosen

Defamation is the “communication to third parties of false statements about a person that injure the reputation of or deter others from associating with that person.”

Unfortunately, under the law, you can’t be sued for defaming a software license. If I could, I’d sue Microsoft for what it has said about the GPL. Their statements are false, and they are obviously intended to deter companies from associating with GPL-licensed software – specifically Linux.

The latest onslaught from Redmond came in the “Royalty-Free CIFS Technical Reference License Agreement,” under which Microsoft offers to license its CIFS technical specifications, along with certain of its patents necessary to implement those specifications, on a royalty-free basis. (See http://msdn.microsoft.com/library/default.asp?url=/library/en-us/dnkerb/html/Finalcifs_LicenseAgrmnt_032802.asp)

At first I was thrilled to see that Microsoft was willing to license its patents on a royalty-free basis. Members of the open source community have long insisted on royalty-free patent licenses for any technology needed for inter-working or other standard implementations. But there are so many exclusions and limitations to the CIFS license that this license is useless for anything except Microsoft’s propaganda purposes; I can’t imagine anyone who’ll want the CIFS technical specifications under those terms.

For example, the license is limited to implementations on “Non-Microsoft Platforms.” Whoopee! That’s how Microsoft stops direct competition at the doorstep so that nobody can write better software to replace any of Microsoft’s own software.

It was the insult in the CIFS license that really caught my eye. The CIFS technical specifications and patents are not available for use with software that is distributed under an “IPR Impairing License.” This defined term means:

the GNU General Public License, the GNU Lesser/Library General Public License, and any license that requires in any instance that other software distributed with software subject to such license (a) be disclosed and distributed in source code form; (b) be licensed for purposes of making derivative works; or (c) be redistributable at no charge.

So Microsoft again reveals that the only real competition it fears is from Linux and other open source software.

The term IPR Impairing stands for “intellectual property rights impairing.” In Microsoft’s confused lexicon, the GPL impairs intellectual property rights. Whose? How? Is the impairment good or bad?

There is nothing in the GPL that impairs anyone’s intellectual property rights, and it is outrageous for Microsoft to assert otherwise. Anyone can use GPL-licensed software without any effect at all on his or her own intellectual property. For example, you don’t have to publish your source code merely by running your software under Linux. You can even modify GPL-licensed code – including Linux -- and as long as you don’t distribute your modifications you incur no obligation whatsoever to distribute the source code to your modifications. (By way of contrast, don’t you dare to reverse engineer, much less modify, Microsoft code!)

You are not forced to license your software under the GPL and to distribute your source code – except in one rare situation: If you take GPL-licensed software, modify it, and distribute your modified version, you must license your modified software under the GPL.

This *reciprocity* provision is based upon a legitimate bargain. In essence, the licensor is giving you broad rights to his or her software, including the right to create and distribute modifications, but only if you agree to reciprocate by returning your distributed modifications to the commons. You must pay for the right to create and distribute modified software, but the currency for your payment is not money – it is your improved software itself.

How does that differ in principle from the obligation to pay the asking price for Microsoft software?

The owner of GPL-licensed intellectual property is establishing a price for a license to his or her property. You are always free to decide not to make and distribute modifications to GPL-licensed software, but if you elect to do so, you must pay the price set by the owner of the original software. You received a benefit from the free software you modified to create your own software, and the price for that benefit is reciprocity.

That is simply capitalism at its finest. The GPL is not, despite Bill Gates' protestations to the contrary, the end of capitalism as we know it.

What can be far more serious challenges to capitalism are the monopolistic practices that Microsoft continues to engage in. That company pretends that it is offering a royalty-free license to CIFS, but the license doesn't apply to implementations on either the Microsoft platform or on the major challenger to that platform, Linux.

Welcome to Microsoft's white elephant sale. I suggest you don't buy.

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