DON'T TRY THIS AT HOME

Dear Linux Magazine Reader,

A flurry of posts last month reminded me of the bad old FUD days a few years ago, when Microsoft used to equate open source software with a kind of disease that must be stopped before it infects the world. In this case, the argument centered around the way Google adapted a collection of Linux kernel header files for the Android Bionic library. Legal blogger Raymond T. Nimmer [1], Free Software advocate Florian Mueller [2], and attorney Edward J. Naughton [3] raised concerns about Google using scripts to "clean" Linux kernel header files [4], then including the modified headers in the Bionic library under a different license. Nimmer, Naughton, and Mueller questioned whether the presence of these headers would make all Android apps that use the Bionic library "derivative works" that would be forced to adopt the open source GPL license.

Linux bloggers, developers, and journalists quickly denounced the argument, with Naughton, who has former Microsoft ties, taking the most heat. I'm no attorney, but I guess I run with the Linux journalist crowd, so I might as well chip in my two cents on what might actually be happening. Let me start by saying the speculation that the GPL can be imposed on any random Android app is a flourish that the Linux builders are correct to dismiss as FUD. However, it occurs to me that no one is really dealing with the other part of the argument, which concerns Google's technique for creating a header file by running a collection of automated scripts on a file to "clean" it of copyrighted content. The idea that you can take something that is copyrighted and perform a series of mechanical maneuvers on it to render it un-copyrighted is, indeed, a pretty uncertain practice that could have more difficulties in the courtroom than you might imagine.
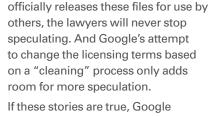
Theoretically, lots of minor things could be copyrightable about the presentation of information in a file that wouldn't get washed away by the scripts, such as the order in which information is organized. Even an attempt to randomize the order to cover tracks does not necessarily insulate the script operator from the reality that the output file is, indeed, derived from the input file. Does that mean Google violated the GPL? Not at all. The GPL is not copyright law. The GPL is a license, and it doesn't apply to situations that are explicitly excluded from it. Linus Torvalds statement that "… we have always made it very clear that the kernel system call interfaces do not in any way result in a derived work as per the GPL …" [5] sums up years of discussion on this topic. What he means is, the provisions of the Linux GPLv2 license [6] are explicitly confined to what is referred to as "the program" (i.e., in this case, the Linux kernel), and information about the interfaces, such as the information contained in these headers, is not regarded as part of "the program"; otherwise, *no* non-free software would ever be able to run on *any* version of Linux.

So, Android app developers look pretty safe from this reported danger of having the GPL crammed down their pajamas. But where does that leave the header files? If they aren't covered by the GPL, what, exactly, is their copyright status? That's where it gets confusing. Certainly it would be extremely difficult for whoever wrote a header file and contributed it for circulation with Linux to exact any concessions from anyone for using it, without a clear statement of permissions or an act that officially releases these files for use by others, the lawyers will never stop speculating. And Google's attempt to change the licensing terms based on a "cleaning" process only adds room for more speculation.

If these stories are true, Google should send its "de-copyrighting" scripts for approval by a qualified attorney before using them again. As for kernel developers, anything they can do to clear up questions about permission to use the header files would help avoid additional merrymaking by the FUD wizards.

Joe

Joe Casad,
Editor in Chief

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[1] Risk in development on copyleft platforms: *http://www.ipinfoblog.com/archives/licensing-law-issues-infringement-and-disclosure-risk-in-development-on-copyleft-platforms.html*

[2] FOSS patents: *http://fosspatents.blogspot.com/2011/03/googles-android-faces-serious-linux.html*

[3] Legal landmines: *http://www.huffingtonpost.com/edward-j-naughton/googles-android-contains-_b_836697.html*

[4] Bionic: *http://android.git.kernel.org/?p=platform/bionic.git;a=blob_plain;f=libc/kernel/README.TXT;hb=froyo-release*

[5] Android sued by Microsoft: *http://www.itworld.com/open-source/140916/android-sued-microsoft-not-linux*

[6] GPLv2: *http://www.gnu.org/licenses/gpl-2.0.html*