

COVENANT MATTERS

Dear Linux Magazine Reader,



Joe Casad, Editor in Chief

Usually we only get one cataclysmic, world-changing Linux event per month, but it looks like we had two this month. The first was the news that Oracle plans to produce a spin-off of Red Hat Enterprise Linux and sell support for way less than Red Hat is charging. The second was the announcement of a deal between Microsoft and Novell in which, reportedly, Microsoft provides

a patent covenant offering protection to users of Suse Linux from suits for patent infringement. It is hard to explicate both these explosions in just one page, so I guess I should just pick one. If anything, the Oracle announcement seems to have more potential for altering the landscape, but maybe that means I should talk about the Novell deal because there is a greater disparity between what it means and what it sounds like it means.

This new patent covenant from Microsoft seems fully intended to invert itself in the mind of the viewer. The user is supposed to think, "If Microsoft will *not* sue the users of Suse, that means they *will* sue the users of other Linux distros. If they *will* sue users of other distros, that means I'd better not use the other distros, which means *I'd better use Suse.*"

This lightly veiled threat is not lost on any listener, and you can bet it isn't lost on Microsoft or Novell. Of course, the ultimatum is carefully packaged in homey pronouncements about commerce and building bridges. I must say that the bridge that is getting built between Closed Source and Open Source is looking like a murky and surreal kind of place, where retaliatory attacks and preemptive legal wrangling are ascribed to some form of positive value system. The mystically punitive nature of these "bridge-building" selective patent covenants makes me more certain than ever that the word "covenant" must have some etymological connection with the word "coven," meaning a gang of witches. Yet I feel strangely unafraid of this deal. It is not that I miss the significance of the scenario in which Microsoft chooses a favorite Linux distro and then pounds the rest of them into submission. It is just that nothing has happened so far to shed any light on the real question, which is, does Microsoft's patent portfolio have the power to bring down Linux, or doesn't it? I'm personally thinking the answer is no, and I'm going to continue to believe that until I see some contrary evidence, which this announcement certainly does not provide.

But if the answer does turn out to be yes, the details of this particular deal seem like a mere distraction – at least from a legal viewpoint.

How powerful are the Microsoft patents? No one really wants to know – including Microsoft. A patent is a powerful weapon, but the best use for a powerful weapon is not to pull the trigger but to sit next to it and *act* like you're going to pull the trigger. Once you use it, you lose the ability to peer silently into the eyes of your opponents and make them shiver with dread. More importantly, you expose yourself to the possibility that the weapon might not even work.

So I don't think this deal pushes us closer to a patent showdown, but I do think there are dangers in it for the Open Source industry. An unfortunate outcome would be if potential customers actually gained the impression that this pledge not to sue if they use Suse actually had some kind of tangible value that is worth paying money for or passing up another deal for. In that case, it would allow Suse to innovate less and base their market position on inertia and legal technicalities rather than on engineering excellence, which would have the sad effect of making Linux just a little bit more like Microsoft.

Joe

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