ONWARD TO GPL 2.5

Dear Linux Magazine Reader,

Joe Casad, Editor in Chief

We've had another lively month in the debate between the Linux kernel developers, led by Linus Torvalds, and the Free Software Foundation (FSF), led by Richard Stallman, on the proposed changes to the Gnu Public License (GPL). Some prominent kernel developers put out a position paper asking the FSF to "…abandon the current GPLv3 process before it becomes too late." Linus did not sign the paper, although his objections to GPLv3 are well known. The FSF then posted their own paper, which they said would clarify "recent misleading information."

The discussion boils down to provisions regarding patents and digital rights management (DRM). But every time I hear about this debate, I am taken back to a presentation by FSF attorney Eben Moglen at the 2005 San Fransisco LinuxWorld. The talk was just prior to the start of the approval process. The purpose of his talk was to define the approval process and the timetable; the details of the first GPLv3 draft were not known publicly at the time.

Eben Moglen is an engaging but careful speaker who chooses his words with the utmost precision. He mentioned in his talk that he would not be able to discuss specific provisions of the license. Of course, everyone knew that patents were a major concern for the FSF, and there was some talk even then about DRM and what to do about it. But at the end of the talk, when I asked him whether it might be possible to give us some indication of the types of issues that GPLv3 was designed to address, his answer was quite interesting in light of the recent fireworks. Moglen did not mention DRM. The three areas of concern that he mentioned at the time were warranty disclaimers, compatibility with other Open Source licenses, and compatibility with other legal systems.

The attention to warranty disclaimers is easy enough to understand. The past 15 years have seen a long evolution of legal precedents defining what should and can be warrantied, as well as what must prudently be defined as *not* having being warrantied.

The license compatibility issue poses dilemmas for Linux distributions and service vendors that promote and distribute the software. Subtle differences in wording can lead to strong differences in meaning. For instance, FSF points out that, although GPLv2 has a clear definition of "source code," it does not contain an explicit definition of "object code," which is present in some other licenses to close possible loopholes.

The question of the compatibility of legal systems is more significant now that Open Source software is truly a global phenomenon. For instance, according to FSF program administrator John Sullivan, "…while the current GPLv2 relies on an implicit patent license, which is dependent on US law, GPLv3 includes an explicit patent license that does the same job internationally."

Once the first draft went public, the DRM discussion drowned out all the other issues. But for all the talk of a compromise ahead, no one has seen it yet. Linus has made it clear that he isn't going to accept the DRM provisions in GPLv3, and it seems the FSF is increasingly unlikely to take the provisions out because, well, Richard Stallman did not get where he is by backing down.

Although anyone who wants a software license could theoretically strip the DRM provisions out of GPLv3, the resulting hybrid (GPLv2.5?) would simply add to the license proliferation and create new incompatibilities. As the position paper by the kernel developers states, "…we also note that the current draft with each of the unacceptable provisions stripped out completely represents at best marginal value over the tested and proven GPLv2."

It looks like Linux will continue to use GPLv2, which will put a damper on the momentum for further acceptance of GPLv3. So anyway, the result is that the three issues the principal FSF attorney highlighted as particularly important at the beginning of the GPLv3 process will not even be addressed because of the preoccupation with DRM.