Published on *Tux Machines* (http://www.tuxmachines.org)

Lawsuit threatens to break new ground on the GPL and software licensing issues

By *Rianne Schestowitz*
Created *30/07/2014 - 10:51am*
Submitted by Rianne Schestowitz on Wednesday 30th of July 2014 10:51:24 AM Filed under OSS [1] Legal [2]

GPLv2 is one of the most widely used FOSS licenses, if not the most. It is the license for some of the most important and commercially valuable FOSS projects, including the Linux kernel, whose contributors include such uncomfortable bedfellows as Oracle and Google, Intel and AMD, and Cisco and Huawei. If XimpleWare is right, and a license under GPLv2 offers no protection from the licensor's patents, Linux would be a landmine for these companies, and really for any company with fewer patents than IBM.

Even without an explicit patent grant, lawyers advising businesses on FOSS issues generally agree that GPLv2 protects licensees (at least those in compliance with the license terms) from patent suits by licensors. This is because the law provides for an implied license (or judicial estoppel) where a licensor's conduct leads the licensee to believe it will not be sued, or where fairness otherwise demands that the licensor should be prevented from suing. Because the GPL encourages licensees to copy, modify, and distribute the licensed software?all conduct that would infringe any patents on the software absent a license?licensees can reasonably expect that the software's producers won't sue them for doing those things. (Adam Pugh and Laura A. Majerus of Fenwick & West discuss GPLv2's implied patent license in greater detail in this paper.)

[3]

OSS Legal

Source URL: http://www.tuxmachines.org/node/67783

Links:
[1] http://www.tuxmachines.org/taxonomy/term/72
[2] http://www.tuxmachines.org/taxonomy/term/106
[3] http://opensource.com/law/14/7/lawsuit-threatens-break-new-ground-gpl-and-software-licensing-issues