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**Leaked HP-Microsoft Memo**

Pending submission by **Anonymous Reader** at 2004-07-16 22:03:06

Anonymous Reader writes "This has been leaked from HP. As you can see, it's two years old. But still relevant."



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From: Campbell, Gary [mailto:gary.campbell@hp.com]  
Sent: Monday, June 03, 2002 7:27 PM  
To: Stallard, Scott J; CTO Office Directs; Chaffin, Janice; Denzel, Nora; McDowell, Mary; Elias, Howard; Fink, Martin R; Becker, Rick (ISS); Beyers, Joe  
Cc: Blackmore, Peter; Robison, Shane  
Subject: Microsoft Patent Cross License - Open Source Software Impact

Microsoft Patent Cross License - Open Source Software Impact

Today we agreed on a new patent cross license with Microsoft that protects HP in the short term, but it has significant impact on HP's use of Open Source software in the long term.

More importantly, we now understand that Microsoft is about to launch legal action against the industry for shipping Open Source software that may force us out of using certain popular Open Source products.

We need to create a cross-HP staffed program to understand the implication by product group and to provide the short term and long term steerage. I'll hook up with Martin tomorrow and start planning next steps for a cross-HP planning team.

Background:

HP is we believe, protected by our previous cross license for patents filed by Microsoft up to June of 2001, to ship open source software that violates Microsoft patents that was developed or shipped prior to today. This means that we can freeze on today's open source functionality and we are protected.

The new cross license does not protect us against new Microsoft patents filed after June 2001 against new open source product functionality shipped or created after today. So we have a two year window before HP has exposure on new Microsoft patents against new open source functionality, but we have exposure because of the MAD clause in the GPL if Microsoft attacks another entity with existing patents. See next section.

Open Source Software is described as a license that follows the intent and process of GPL or GPL lite. Additionally several major products are explicitly called out as not protected by the cross license, such as Samba, Wine, KDE, Gnome, Apache, Sendmail, and Linux.

Microsoft's Intentions:

Microsoft could attack Open Source Software for patent infringements against OEMs, Linux distributors, and least likely open source developers. They are specifically upset about Samba, Apache and Sendmail. We believe Samba is first, and they will attempt to prove it isn't covered by prior patent cross as a so called "clone" product carve out in the previous agreement.

OEMs that don't have a cross(like SUN), or OEMs like HP that they force a change in their cross license to exclude open source software are probably the first target.

Intel, Red Hat, SuSE, UBL, Oracle are probably in the first wave as well.

IBM we don't know what the status of termination of their Microsoft cross license is. They could be protected by their previous OS/2 deals?

Mutually Assured Destruction Clause:

But it probably doesn't matter, because the GPL license has a mutually assured destruction clause in section 7, if anyone is sued over a patent infringement, no one is licensed under the GPL to ship GPL-ed products. This is probably what Microsoft intends to do.

Basically Microsoft is going to use the legal system to shut down open source software, and for all of its cleverness, the GPL makes it fairly easy unless a white knight steps in.

Best guess on the timing, this fall when they are finished settling with DOJ and the states.

Industry Reaction:

At this point we have no information on who would defend open source with another patent portfolio. IBM does not appear to have a plan. Dell backed out of a lot of Linux activity and laid off their Linux marketing group, and Intel went radio silent on Linux publicity in March( I guess that they figured this out before, possibly from a new patent cross



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license activity!!!).

#### Short Term Action:

We need to create a cross HP action plan with a staffed team. We don't have to exit selling to the open source market, but we need to plan smartly where to reduce our exposure.

#### 1 - Embedded Linux/Open source in HP products and devices

Open source technology is today in embedded printers, our storage NAS product, HP-UX with Gnome, Linux affinity, Apache in multiple products.

We need a cross company planning team to address this, we are protected for 2 years, longer if we freeze on today's functionality, or possibly only until fall if MSFT triggers the GPL MAD clause.

#### 2 - Non-Embedded Linux/Open Source on top of HP products

Microsoft intends to sue companies shipping Open Source products that potentially violate their patents. Even though we have short term protection, we need to lower our profile while still shipping products. We need to examine reducing our exposure on pre-loading Linux by off loading it to the channels exclusively.

Again we need a cross company plan.

#### 3 - Donating Software to the Open Source

We will need to change how we donate software to the open source, probably the type of license we use, lower the profile of our opensource portal, etc.

#### 4 - Legal Plan

We need to explore how to better protect our products in the court and be prepared with a plan that we are willing to execute against."



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