NEWSANALYSIS

The Linux Voice view on what's going on in the world of Free Software.

The erosion of software patents

Reform is coming in the form of evolution, not revolution. Praise be for that…

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I've long been a critic of patents on software, even if the boundary between them and other patents is hazy. Patents may work in other industries, where the cost of innovation is so high that a temporary, state-sanctioned monopoly provides just enough time to gain a return on the investment. That's the big justification of patents in pharmaceuticals, for example. But that investment–return ratio has a completely different value for software. It turns out that software patents have little bearing on encouraging innovation.

No programmer I've ever met refers to software patents, for two reasons. First, they aren't written for programmers to learn from – they're written for patent lawyers to sue against. You'll find software patent filings that contain no sample code and few technically-oriented descriptions. When I worked at IBM, I asked a patent lawyer at the company what was needed to file a patent. I was told "a rough idea – we can fill in the details for you – and then all the ways you can think of how we could tell if someone else was using the idea."

The second reason programmers never refer to software patents is that they're told not to do so. US law permits much greater penalties if patent infringement is found to be wilful. Many people regard looking at patents as good a proof of wilfulness as you can get. Every company I've ever visited has told its programmers to stay well clear of reading patents.

Safety in numbers

While corporations can usually find a way to defend themselves – in the extreme via patent licensing – open source communities would probably not be able to do so. There's often no legal entity to protect open source programmers. When there is an entity, it's likely to be a non-profit with few resources. Anything that stands in the way of software patents is good news for open source.

Given that the market for technology is global, like the internet, what happens in the USA is very significant in setting trends for all of us. So it's good to pay attention to US legal decisions, even if we live in Europe where we think the situation is different.

At last there's some good news. Recently, the US Supreme Court made a landmark decision when it declared software patents belonging to Alice Corporation to be invalid – the Alice Corporation vs CLS Bank decision. It looks like that decision is already making a difference in reversing the tide of software patents. It has now showed up several times in the US Court of Appeals for the Federal Circuit (CAFC), most notably in a major software patent troll case but also in individual cases. That's the court that usually handles appeals of patent cases in the USA.

Previously this court struggled to understand what it took to invalidate a software patent, but in decisions delivered recently the Supreme Court's clarifications in Alice vs CLS showed up several times. In a significant case, they helpfully clarified the decision making process in a case involving prolific patent plaintiff Digitech Image Technologies. The case related to a core part of digital imaging – colour profiles.

It had appealed a finding by the District Court for the Central District of California that the patents it was using to attack a veritable Who's-Who of the digital imaging market were invalid. Legal scholar Mark Lemley led a team representing camera manufacturers including Mamiya, Leica, Pentax and Hasselblad, computer makers such as Toshiba and Asus and major US retailers B&H, Newegg and Buy.Com.

The most important use of the Alice vs CLS decision came when the CAFC decided against accepting "a device which…" as a way to make an abstract idea patentable:

A change in interpretation

This is a good sign for the software industry. Previously, CAFC had a tendency to accept the validity of such patents, but it seems the SCOTUS finding could reverse that tendency and in time discourage use of software patents. Let's hope they can resist the temptation to act on their slightly curious interpretation of the SCOTUS explanation of what it would take for a software patent to remain valid.

This is not the major reform some of us have hoped for – which may yet appear – but the steady drip drip drip of the Alice vs CLS decision on the existing mountain of bad software patents looks like it will level the landscape much sooner than would otherwise have been the case.

> **"Software patents aren't written for programmers to learn from – they're written for patent lawyers."**

CATCHUP

Summarised: the biggest news stories from the last month

1 Linus Torvalds: "I still want the desktop"

Although Linux's market share on the desktop has hovered around a few percent for many years, it's no reason to give up. The kernel head honcho has said he still wants Linux to conquer home machines, stressing that the problems come from infrastructure and packaging. It should be easier for application developers to build binaries that run across all distributions, instead of needing separate packages for every distro and release, Torvalds believes. And we agree with the man.

2 Don't panic: Munich isn't switching back to Windows. Yet...

Over the last decade, Munich City Council has moved 15,000 PCs to Linux. Recently the new mayor claimed that the transition was a mistake and should be reverted, leading so-called "news" sites on the web to say the whole thing was a disaster. Not true: the Council has dismissed the mayor's remarks as "irrelevant personal opinions", and while alternatives will be considered, there's currently no plan to move away from Linux.

3 Gnome Foundation publishes its Annual Report for 2013

You've got to hand it to Gnome, even if you disagreed with the design choices for Gnome 3. The Foundation does a great deal to bring developers together with hackfests and conferences. Read the full report (in PDF format) at **http://tinyurl.com/gnome2013**

GNOME™

4 Firefox to get sponsored tiles in upcoming release

The Mozilla Foundation has received a lot of flak for this, but funding for *Firefox* development doesn't grow on trees. Future versions of the browser will have sponsored tiles on the new tab page – that is, tiles from Mozilla partners that "may be of interest" to users. As you visit more and more sites, however, the sponsored tiles will gradually be replaced by your most visited pages, so this is generally something that will only affect brand new *Firefox* installations.

5 China to launch new OS in September, probably based on Linux

The government of the world's most populous country is still largely running Windows XP, and has banned upgrades to Windows 8. Now the Communist Party has started work on its own OS, likely based on Linux, to move the country away from dependence on Western companies. It will have its own app store, and eventually run on tablets and smartphones. We can't help but feel that the whole NSA spying antics may have played a part in this...

6 Freshmeat (aka Freecode) reborn as Freshcode

For many years, Freecode (formerly known as Freshmeat) was the number one source for tracking free software releases. Unfortunately it died a few months ago, and we were stuck without a replacement... until now. A new website at **www.freshcode.club** provides the spiritual successor to the old sites, with a very similar look and feel. Currently it's at version 0.7.0 and lacking some features, but plenty of developers are submitting their wares and it's getting busier with each day.

7 XBMC gets new name: say hello to "Kodi"

It's probably the most popular media centre software for Linux, but its name was getting a bit dated: the *Xbox Media Centre* barely runs on the original console, and doesn't have ports for the successor machines. It also does more than just playing media – it has games too. So the team behind it has decided to give it a shiny new name, *Kodi*, along with a new logo. *Kodi 14* is undergoing development as we speak, with alpha releases coming thick and fast.

kodi
ENTERTAINMENT CENTER

8 Kernel git repository gets two-factor authentication

Previously, any developer committing code to the main Linux kernel tree used their SSH private key as a means of identification. This works OK until the key is stolen – so a new system has been put in place. All hackers with access to the main tree now have USB gizmos (YubiKeys), which provides an extra level of security. For us end users, it's another safeguard against crackers masquerading as real kernel developers and sneaking dodgy code into the source tree.