

RETRIBUTIONWARE

Dear Linux Magazine Reader,



Joe Casad, Editor in Chief

Despite all the talk of alleged patent infringement issues with Linux, no one seems to have any details. Given that problems are everywhere and nobody has any real answers, I've always thought the Open Source community should get off the defensive and start raising some new arguments. A closer look will reveal that patents are nowhere near the biggest risk a software customer will face.

The GPL assures the right of the user to copy software. The closed source industry, on the other hand, makes it clear you are in big trouble if any software they sell your company gets copied. The chances of a customer getting sued for flakey and ill-defined patent nuances is extremely small, but the chances of a customer facing lawsuits for rogue employees pirating closed source software is very real.

In the US, for instance, if anyone in your company makes a copy of software that doesn't have a retribution-free copy policy, your company could lose as much as US\$ 150,000 for each copy. And, according to the Business Software Alliance (BSA) <http://www.bsa.org>, "This is true even if the company's management was unaware of the employee's actions."

Before you assume the risk and uncertainty of purchasing software with a copy retribution license, it would behoove you to calculate a pair of very illuminating parameters, which I will call:

- The PAV (Punishment for Anticipated Violations) – the amount of money your company could theoretically lose due to the predicted level of unauthorized copying that will be going on on your network;
- The DN (Doomsday Number) – the number of illegal copies necessary to bankrupt your company given an award of the maximum penalty.

As far as I can tell, the equations for these parameters are as follows. These equations are based on the maximum damages and do not include criminal penalties or legal fees:

$$PAV = E \times P \times N \times 150,000$$

$$DN = B / 150,000$$

where E is number of employees who are able to copy; P is the percent of E who will act to copy if the opportunity is available; N is the number of copies each copying employee will make, and B is the total financial loss necessary to bankrupt your company

As a quick example, assume your company has 100 employees and does not use technology that will reliably

obstruct users from copying software. Assuming 3% will act to copy, with each copying employee making a total of 5 copies, the PAV is:

$PAV = 100 \times .03 \times 5 \times 150,000 = \text{US\$ } 2,250,000$
which is the maximum loss for the amount of rogue copying you can expect for your network.

If a loss of US\$ 2 million would bankrupt your whole company, you can use the equation for the Doomsday Number to determine how many illegal copies it will take to force your company to close its doors:

$DN = 2,000,000 / 150,000 = 13.3$
which you could round up to 14 illegal copies.

The equations do not actually guarantee you will sustain these losses. The purpose is to spell out your maximum level of exposure. The equations outline the level of rogue copying at which your company's continued survival will depend upon three factors that are beyond your control:

- The ability of your employees to hide what they did;
- The benevolence of a judge in awarding penalties below the maximum;
- The willingness of the software vendor to act against the interests of its shareholders by refusing to pursue revenues to which they are entitled.

To be fair, I should add that it is also possible to copy Open Source software in a way that violates the license, however, the terms are much less restrictive, and the incentive for making non-compliant copies is much lower because so many of the tools are available on the Internet for free. Ultimately, you'll have to decide who's more likely to get you in trouble, a community founded on the principle of free software distribution, or an industry that treats almost any kind of copying as a crime.

Joe

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