

First US GPL Lawsuit: What's 'Free' Got to Do With It?



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The Software Freedom Law Center has filed a lawsuit against Monsoon Multimedia on behalf of two principal developers of the company BusyBox. "Free software licenses such as the GPL exist to protect the freedom of computer users. If we don't ensure that these licenses are respected, then they will not be able to achieve their goal," said Eben Moglen, founding director of SFLC.

In what promises to be a precedent-setting case, the Software Freedom Law Center (SFLC) announced Thursday that it has filed the first ever U.S. copyright infringement lawsuit based on a violation of the GNU General Public License (GPL).

The case was filed on behalf of two principal developers of BusyBox against Monsoon Multimedia. BusyBox is a lightweight set of standard Unix utilities commonly used in embedded systems and is open source software licensed under GPLv2.

"We licensed BusyBox under the GPL to give users the freedom to access and modify its source code," said Erik Andersen, a developer of BusyBox and a named plaintiff in the lawsuit filed Wednesday in Manhattan Federal District Court. "If companies will not abide by the fair terms of our license, then we have no choice but to ask our attorneys to go to court to force them to do so."

Protecting Freedom

The GPL requires that redistributors of BusyBox ensure that every downstream recipient is given access to the program's source code. Monsoon Multimedia says on its Web site that its products and firmware contain BusyBox, but it has not provided any recipients with access to the underlying source code, the SFLC says.

The SFLC's complaint requests that an injunction be issued against Monsoon Multimedia and that damages and litigation costs be awarded to the plaintiffs. The case, "Erik Andersen and Rob Landley v. Monsoon Multimedia Inc.," will be heard by Senior District Judge John E. Sprizzo of the United States District Court for the Southern District of New York.

"Free software licenses such as the GPL exist to protect the freedom of computer users. If we don't ensure that these licenses are respected, then they will not be able to achieve their goal," said Eben Moglen, founding director of SFLC. "Our goal is simply to ensure that Monsoon Multimedia complies with the terms of the GPL," he said.

Open Source vs. Public Domain

Monsoon Multimedia's main engineering offices are in New Delhi, India, and that international angle could present a challenge, Raven Zachary, senior analyst and open source practice head with The 451 Group, told LinuxInsider.

"This is going to be an important case to watch," he added. "People often mistake open source for 'lack of copyright,'" he said, "but there's a big difference between open source and public domain."

The SFLC's Moglen has made it widely known that any time he uncovers violations of the GPL, he will "call up the company in question and ask if they want to be the first GPL lawsuit," Zachary explained.

Setting a Precedent

That conversation apparently did not resolve the problem with Monsoon, he added, so it's possible the SFLC will want to make sure the case goes to trial so as to set a precedent. If that happens, "my guess is that it will be found in favor of BusyBox," Zachary said.

Of course, "the really troubling aspect is that for every Monsoon, there could be hundreds of thousands of others that we don't hear about," he noted.

Most companies that use the GPL are interested in open source software and eased restrictions on the use of software code, so it's interesting to see a user of the license turning to "the more structured element of the court system to protect those rights," Sean Kane, an attorney with Drakeford & Kane, told LinuxInsider. "It's interesting that they need an entity with teeth to police it."

Two key issues lie at the heart of the case, Kane added. First is the question of whether the code Monsoon used is, in fact, BusyBox's code. If it is, and BusyBox created it, then "there could potentially be infringement action," Kane explained.

Two Key Issues

If part of BusyBox's code derives in turn from another developer, "they will need to go back and prove that everybody down the line licensed it properly," Kane added. "That could muddy the waters."

The second key issue is demonstrating breach of contract, Kane said, in that the SFLC will have to demonstrate that the GPL has been violated. If the license hasn't been violated, there also won't be a case for infringement, he said.

Assuming the case goes to trial, it could set a precedent, Kane added. "This could be one of the first cases that really has a court view the GPL to evaluate whether or not there are any pitfalls in it and whether it's a valid license," he said.

"This case will be good in that it could provide a clear path for the resolution of future GPL disputes," Zachary concluded. "It will be interesting to see how it turns out."

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