



PEARL COHEN ZEDEK LATZER

# Patents & Open Source Code

**December 17, 2007**

## Two Major Risks:

- ▶ Patent Risk for **Patent Holder**; and
- ▶ Patent Risk for **Users of the Open Source Code**

## Patent Risk for Patent Holder

### From the Apache 2.0 – Section 3 - Patent License

- ▶ each Contributor hereby grants to You
- ▶ a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable (except as stated in this section) **patent license**
- ▶ to make, have made, use, offer to sell, sell, import, and otherwise transfer the Work

## Patent Risk for Patent Holder

### From the GPL V. 2 – Section 7

- ▶ you may not distribute the Program **at all**
- ▶ If you cannot satisfy simultaneously your obligations under this License and any other obligations

## Patent Risk for Patent Holder

### From the GPL V. 3 – Section 11

- ▶ Each contributor grants you
- ▶ a non-exclusive, worldwide, royalty-free **patent license**
- ▶ under the contributor's **essential patent claims**,
- ▶ to make, use, sell, offer for sale, import and otherwise run, modify and propagate the contents of its contributor version

## Patent Risk for Patent Holder

### From the CDDL V.1 – Section 6

- ▶ If you assess a patent infringement claim against Initial Developer or a Contributor
- ▶ Then any and all rights granted, directly or indirectly, to you
- ▶ Shall upon 60 days notice terminate prospectively and automatically terminate

# Patents and Open Source Code

## Patent Risk for Users of Open Source Code

The screenshot shows a Windows Internet Explorer browser window. The address bar displays the URL: [http://money.cnn.com/magazines/fortune/fortune\\_archive/2007/05/28/100033867/](http://money.cnn.com/magazines/fortune/fortune_archive/2007/05/28/100033867/). The browser's menu bar includes File, Edit, View, Favorites, Tools, and Help. The toolbar contains various icons for navigation and utility. The main content area displays a CNN Money article. At the top of the article is a banner for CNN Partner Hotels with the text "For the best hotels in DUBAI" and the website [www.cnnpartners.com/cityhotels](http://www.cnnpartners.com/cityhotels). Below the banner is the CNN Money logo and navigation links for FORTUNE, Money, BUSINESS 2.0, and FORTUNE SMALL BUSINESS. A search bar is present, powered by Yahoo! Search, with a "GET QUOTES" button and a "SYMBOL LOOK-UP" button. The article title is "Microsoft takes on the free world" and the sub-headline is "Microsoft claims that free software like Linux, which runs a big chunk of corporate America, violates 235 of its patents. It wants royalties from distributors and users. Users like you, maybe. Fortune's Roger Parloff reports." The author is Roger Parloff, Fortune senior editor, and the date is May 14 2007: 9:35 AM EDT. The article text begins with "(Fortune Magazine) -- Free software is great, and corporate America loves it. It's often high-quality stuff that can be downloaded free off the Internet and then copied at will. It's versatile - it can be customized to perform almost any large-scale computing task - and it's blessedly crash-resistant." A sidebar on the right lists "Top Stories" including "Stocks set to slide", "Minority majorities", "Buick ties Lexus in car reliability", "Realtors see home sales drop", and "Asian stocks advance". At the bottom of the article is a promotional banner for CNN International with the text "Every week on CNN International Watch online now". The Windows taskbar at the bottom shows the Start button, several open applications, and the system tray with the time 11:58 AM.

Microsoft claims software like Linux violates its patents - May 28, 2007 - Windows Internet Explorer

[http://money.cnn.com/magazines/fortune/fortune\\_archive/2007/05/28/100033867/](http://money.cnn.com/magazines/fortune/fortune_archive/2007/05/28/100033867/)

File Edit View Favorites Tools Help

Google  Go

Microsoft claims software like Linux violates its patent...

For the best hotels in DUBAI [www.cnnpartners.com/cityhotels](http://www.cnnpartners.com/cityhotels)

The Internet home of: FORTUNE Money BUSINESS 2.0 FORTUNE SMALL BUSINESS

Subscribe to Fortune | Free Trial

CNNMoney.com  GET QUOTES SYMBOL LOOK-UP SEARCH Entire Site powered by YAHOO! SEARCH

HOME NEWS MARKETS MY PORTFOLIO TECHNOLOGY JOBS PERSONAL FINANCE LUXURY REAL ESTATE SMALL BUSINESS RANKINGS

### Microsoft takes on the free world

Microsoft claims that free software like Linux, which runs a big chunk of corporate America, violates 235 of its patents. It wants royalties from distributors and users. Users like you, maybe. Fortune's Roger Parloff reports.

By Roger Parloff, Fortune senior editor  
May 14 2007: 9:35 AM EDT

**FORTUNE**

(Fortune Magazine) -- Free software is great, and corporate America loves it. It's often high-quality stuff that can be downloaded free off the Internet and then copied at will. It's versatile - it can be customized to perform almost any large-scale computing task - and it's blessedly crash-resistant.

A broad community of developers, from individuals to large companies like IBM, is constantly working to improve it and introduce new features. No wonder the business world has embraced it so enthusiastically: More than half the companies in the Fortune 500 are thought to be using the free operating system Linux in their data centers.

Top Stories

- [Stocks set to slide](#)
- [Minority majorities](#)
- [Buick ties Lexus in car reliability](#)
- [Realtors see home sales drop](#)
- [Asian stocks advance](#)

Every week on CNN International Watch online now

Internet 100%

start         EN



## Patent Risk for Users of Open Source Code Microsoft – Novell Agreement

Microsoft and Novell Announce Broad Collaboration on Windows and Linux Interoperability and Support  
Press Release

Companies also announce a patent agreement covering proprietary and open source products.

WALTHAM, Mass.— 02 Nov 2006— Microsoft Corp. and Novell Inc. today announced a set of broad business and technical collaboration agreements to build, market and support a series of new solutions to make Novell and Microsoft® products work better together. The two companies also announced an agreement to provide each other's customers with patent coverage for their respective products. These agreements will be in place until at least 2012. Under this new model, customers will realize unprecedented choice and flexibility through improved interoperability and manageability between Windows® and Linux.

"They said it couldn't be done. This is a new model and a true evolution of our relationship that we think customers will immediately find compelling because it delivers practical value by bringing two of their most important platform investments closer together," said Steve Ballmer, CEO of Microsoft. "We're excited to work with Novell, whose strengths include its heritage as a mixed-source company. Resolving our patent issues enables a combined focus on virtualization and Web services management to create new opportunities for our companies and our customers."

Under the agreement, Novell is establishing clear leadership among Linux platform and open source software providers on interoperability for mixed-source environments. As a result, Microsoft will officially recommend SUSE Linux Enterprise for customers who want Windows and Linux solutions. Additionally, Microsoft will distribute coupons for SUSE Linux Enterprise Server maintenance and support, so that customers can benefit from the use of an interoperable version of Linux with patent coverage as well as the collaborative work between the two companies.

"Too often technology companies ask their customers to adapt to them. Today we are adapting to our customers," said Ron Hovsenian, president and CEO of Novell. "Microsoft and Novell are enabling customers to take advantage of each other's

## June 29, 2007 Release of the GPL Version 3.0



PHOTO: RIJAZ RAHIM/AP

## Patent Risk for Users of Open Source Code From the GPL V.3 Section 11

- ▶ You may not convey a covered work
- ▶ if you are a party to an arrangement with a third party that is in the business of distributing software,
- ▶ you make payment to the third party based on the extent of your activity of conveying the work,
- ▶ the third party grants, to any of the parties who would receive the covered work from you, a discriminatory patent license
- ▶ unless you entered into that arrangement, or that patent license was granted, prior to 28 March 2007

## Patent Risk for Users of Open Source Code

openinventionnetwork<sup>SM</sup>

“furthers software innovation by acquiring patents that are to be used for cross-licensing purposes to defend the Linux System. OINSM makes them available to support Linux by licensing them on a royalty-free basis.”

**NEC**

**Novell.**



**IBM.**

**PHILIPS**

# Thank You