

Microsoft's New Monopoly

GNU philosophy

This article was written in July 2005. Microsoft adopted a different policy in 2006, so the specific policies described below and the specific criticisms of them are only of historical significance. The overall problem remains, however: Microsoft's cunningly worded new policy (see http://grokdoc.net/index.php/EOOXML_objections#Patent_rights_to_implement_the_Ecma_376_specification_have_not_been_granted) does not give anyone clear permission to implement OOXML.

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This document is part of GNU philosophy, the GNU Project's exhaustive collection of articles and essays about free software and related matters.

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European legislators who endorse software patents frequently claim that those wouldn't affect free software (or "open source"). Microsoft's lawyers are determined to prove they are mistaken.

Leaked internal documents in 1998 said that Microsoft considered the free software GNU/Linux operating system (referred to therein as "Linux") as the principal competitor to Windows, and spoke of using patents and secret file formats to hold us back.

Because Microsoft has so much market power, it can often impose new standards at will. It need only patent some minor idea, design a file format, programming language, or communication protocol based on it, and then pressure users to adopt it. Then we in the free software community will be forbidden to provide software that does what these users want; they will be locked in to Microsoft, and we will be locked out from serving them.

Previously Microsoft tried to get its patented scheme for spam blocking adopted as an Internet standard, so as to exclude free software from handling email. The standards committee in charge rejected the proposal, but Microsoft said it would try to convince large ISPs to use the scheme anyway.

Now Microsoft is planning to try something similar for Word files.

Several years ago, Microsoft abandoned its documented format for saving documents, and switched to a new format which was secret. However, the developers of free software word processors such as AbiWord and OpenOffice.org experimented assiduously for years to figure out the format, and now those programs can read most Word files. But Microsoft isn't licked yet.

The next version of Microsoft Word will use formats that involve a technique that Microsoft claims to hold a patent on. Microsoft offers a royalty-free patent license for certain limited purposes, but it is so limited that it does not allow free software. You can see the license here: <http://microsoft.com/whdc/xps/xpspatentlic.mspx>.

Free software is defined as software that respects four fundamental freedoms: (0) freedom to run the software as you wish, (1) freedom to study the source code and modify it to do what you wish, (2) freedom to make and redistribute copies, and (3) freedom to publish modified versions. Only programmers can directly exercise freedoms 1 and 3, but all users can exercise freedoms 0 and 2, and all users benefit from the modifications that programmers write and publish.

Distributing an application under Microsoft's patent license imposes license terms that prohibit most possible modifications of the software. Lacking freedom 3, the freedom to publish modified versions, it would not be free software. (I think it could not be "open source" software either, since that definition is similar; but it is not identical, and I cannot speak for the advocates of open source.)

The Microsoft license also requires inclusion of a specific statement. That requirement would not in itself prevent the program from being free: it is normal for free software to carry license notices that cannot be changed, and this statement could be included in one of them. The statement is biased and confusing, since it uses the term "intellectual property"; fortunately, one is not required to endorse the statement as true or even meaningful, only to include it. The software developer could cancel its misleading effect with a disclaimer like

this: “The following misleading statement has been imposed on us by Microsoft; please be advised that it is propaganda. See <http://gnu.org/philosophy/not-ipr.html> for more explanation.”

However, the requirement to include a fixed piece of text is actually quite cunning, because anyone who does so has explicitly accepted and applied the restrictions of the Microsoft patent license. The resulting program is clearly not free software.

Some free software licenses, such as the most popular GNU General Public License (GNU GPL), forbid publication of a modified version if it isn't free software in the same way. (We call that the “liberty or death” clause, since it ensures the program will remain free or die.) To apply Microsoft's license to a program under the GNU GPL would violate the program's license; it would be illegal. Many other free software licenses permit nonfree modified versions. It wouldn't be illegal to modify such a program and publish the modified version under Microsoft's patent license. But that modified version, with its modified license, wouldn't be free software.

Microsoft's patent covering the new Word format is a US patent. It doesn't restrict anyone in Europe; Europeans are free to make and use software that can read this format. Europeans that develop or use software currently enjoy an advantage over Americans: Americans can be sued for patent infringement for their software activities in the US, but the Europeans cannot be sued for their activities in Europe. Europeans can already get US software patents and sue Americans, but Americans cannot get European software patents if Europe doesn't allow them.

All that will change if the European Parliament authorizes software patents. Microsoft will be one of thousands of foreign software patent holders that will bring their patents over to Europe to sue the software developers and computer users there. Of the 50,000-odd putatively invalid software patents issued by the European Patent Office, around 80 percent do not belong to Europeans. The European Parliament should vote to keep these patents invalid, and keep Europeans safe.

2009 Note

The EU directive to allow software patents was rejected, but the European Patent Office has continued issuing them and some countries treat them as valid. See <http://ffii.org> for more information and to participate in the campaign against software patents in Europe.