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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92066968
Party	Defendant Software Freedom Conservancy
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Submission	Motion for Summary Judgment **Yes**, the Filer previously made its initial disclosures pursuant to Trademark Rule 2.120(a); OR the motion for summary judgment is based on claim or issue pre-clusion, or lack of jurisdiction. The deadline for pretrial disclosures for the first testimony period as originally set or reset: **07/20/2018**
Filer's Name	Pamela S Chestek
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Date	12/11/2017
Attachments	Motion for SJ on affirmative defenses-signed.pdf(756280 bytes) Kuhn-Declara-tion_summary-judgment_as-submitted_reduced-size-signed.pdf(2181238 bytes) Sandler-declara-tion_summary-judgment_as-submitted-reduced-size-signed.pdf(1777273 bytes) Chestek declaration_summary-judgment-signed-with-exhibits.pdf(2003142 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 4212971
Mark: SOFTWARE FREEDOM CONSERVANCY
Registration date: September 25, 2012

Software Freedom Law Center
Petitioner,
v.
Software Freedom Conservancy
Registrant.

Cancellation No. 92066968

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT ON ITS AFFIRMATIVE DEFENSES

Introduction

The Petitioner, Software Freedom Law Center ("SFLC"), is a provider of legal services. It had the idea to create an independent entity that would offer financial and administrative services for free and open source software projects. It chose the name SOFTWARE FREEDOM CONSERVANCY for that entity, the Respondent ("Conservancy"). SFLC did the corporate formation work for the 501(c)(3) non-profit charity. SFLC served as legal counsel for Conservancy for the next six years. To this day it continues to recommend the services of Conservancy. But eleven years after SFLC publicly announced it had created Conservancy, a bare three days before the five-year anniversary of the registration of the SOFTWARE FREEDOM CONSERVANCY mark, and without ever once raising the issue with Conservancy, the SFLC has petitioned to cancel the registration for the very trademark it chose for its former client.

If these facts seem unusual for a cancellation, it does indeed seem like something odd is going on. The two organizations co-existed harmoniously for many years, but in more recent history the Petitioner started taking issue with some of Conservancy's activities. SFLC's various protestations have not lacked vehemence, but what they do lack is any mention whatsoever of a problem with the Conservancy name or trademark.

It therefore appears this cancellation was not filed because the Petitioner thinks there is trademark confusion. And when a claim is brought for the wrong reasons, it will necessarily fail. Conservancy now moves for summary judgment on its affirmative defenses of laches, acquiescence, equitable estoppel, and unclean hands. Such an early motion for summary judgment is unusual. However, the Conservancy is a public charity with a lean staff and tight budget. It can ill afford this cancellation action. And even at this early stage, the evidence overwhelming shows that SFLC has no rational claim.

<div align="center">Statement of Facts</div>

Both parties operate in a field known as "free software." "Free Software" is a term that is used to describe software that has a copyright license that ensures the recipient of the software has the freedom to run, copy, distribute, study, change and improve the software.[1] The "four freedoms" is the

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[1]   Declaration of Bradley M. Kuhn in Support Of Respondent's Motion For Summary Judgment on Its Affirmative Defenses ("Kuhn Decl."), ¶ 6.

foundational philosophy underlying free software.[2] The field is also known as "FLOSS," for "free, libre

and open source software"[3] and "FOSS" for "free and open source software."[4]

Petitioner SFLC is a not-for-profit law firm that provides legal services to advance and promote

FOSS.[5] Respondent Conservancy is a not-for-profit charity that provides a non-profit home and

infrastructure for FOSS projects, providing for the projects' administrative and management needs to

support software development and documentation.[6] When projects join Conservancy, they become part

of the organization operating under its corporate umbrella.

The parties' goods and services are:

Mark	Goods and Services
SOFTWARE FREEDOM LAW CENTER	Class 45: Legal services
SOFTWARE FREEDOM CONSERVANCY	Class 9: Downloadable computer software for media file management, object-oriented software engineering, messaging, software development tools, operating system utilities, operating system emulation, inventory management, graphics modeling, Braille displays, implementation of dynamic languages, print services, browser automation, operating systems programs in the field of education, and

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2   *Id.*

3   "Open source" is a term also used for the same type of software. This term originated
with a group that had a different philosophical view on the benefits of liberally-licensed software.

4   Kuhn. Decl. ¶ 3.

5   Petition for Cancellation, ¶ 1.

6   Petition for Cancellation, ¶ 10; Kuhn. Decl. ¶ 4.

| | computer operating system tools for use in embedded systems, provided freely and openly licensed use for the public good.

Class 35: Charitable services, namely, promoting public awareness of free, libre and open source software projects, and developing and defending the same. |
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The SOFTWARE FREEDOM CONSERVANCY trademark application was filed on November 29, 2011 and published for opposition on July 10, 2012. After no opposition was filed, it registered in due course 11 weeks later on September 25, 2012.

Respondent Conservancy was the creation of Petitioner SFLC, formed in April, 2006 as an entity entirely independent from SFLC.[7] In a press release dated April 3, 2006, the SFLC announced "The mission of the Conservancy is to provide free and open source software developers with all of the benefits of being a tax-exempt corporate entity without having to do any of the work of setting up and maintaining such an entity[.]... Letting projects pass off the mundane administrative burdens placed on those wishing to benefit from nonprofit status is a significant way to keep developers focused on what they do best - writing software."[8]

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[7]   Petition for Cancellation, ¶ 10.

[8]   Declaration of Pamela S. Chestek in Support Of Respondent's Motion For Summary Judgment on Its Affirmative Defenses ("Chestek Decl.") Exh. 1, *Software Freedom Law Center Launches Conservancy*, Software Freedom Law Center (Apr. 3, 2006), https://www.softwarefreedom.org/news/2006/apr/03/conservancy-launch/.

The SFLC chose the name "Software Freedom Conservancy" for the new entity[9] and did the

corporate formation work for it.[10] SFLC became legal counsel for Conservancy and provided legal services

to it for many years, including prosecuting a number of trademark applications for it.[11] There was initially

some overlap of Conservancy directors and officers with SFLC employees,[12] but by approximately July of

2011 SFLC had withdrawn as legal counsel[13] and the two organizations no longer had any common board

members, officers or employees.[14]

There are two former SFLC employees who are now with Conservancy. Bradley Kuhn was an

employee of the SFLC from March 1, 2005, shortly after it was formed, until September 30, 2010.[15] While

an employee of SFLC he also held the role of President of Conservancy, a position he still has.[16] Kuhn left

SFLC in 2010 to work full-time for Conservancy, becoming its first employee, and is still employed by

Conservancy, as well as still serving as its President.[17]

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9   Kuhn Decl. ¶¶ 10-12; Declaration of Karen M. Sandler in Support Of Respondent's Motion For Summary Judgment on Its Affirmative Defenses ("Sandler Decl."), ¶ 5.

10   Petition for Cancellation ¶ 10; Sandler Decl. ¶¶ 6-7; Kuhn Decl. ¶ 28 and Kuhn Decl. Exh. 10.

11   Kuhn Decl. ¶¶ 14, 19 and Kuhn Decl. Exh 3.

12   Petition for Cancellation ¶ 11.

13   Kuhn Decl. ¶ 17 and Kuhn Decl. Exh. 5.

14   Petition for Cancellation ¶ 16.

15   Petition for Cancellation ¶ 13; Kuhn Decl. ¶¶ 15-16.

16   Petition for Cancellation ¶¶ 11-12; Kuhn Decl. ¶ 2.

17   Petition for Cancellation ¶ 14; Kuhn Decl. ¶ 30.

Karen Sandler was hired in the position of counsel at SFLC in 2005, promoted to general counsel in January, 2010, and left SFLC to take the position of Executive Director with another free software non-profit starting June 21, 2011.[18] She was hired as Executive Director of Conservancy in March, 2014 and is presently in that position.[19]

SFLC and Conservancy have always traveled in the same circles and continue to do so to this day. Employees of both organizations attend the same conferences numerous times a year.[20] They have appeared on the same panels at conferences.[21] They have invited each other to speak at events they were organizing.[22] SFLC, even after having filed this Petition, promotes Conservancy's activities on its website.[23] Never on any of those occasions, or by letter, email, telephone, text message, instant message or tweet, did SFLC suggest that it had any concern whatsoever about Conservancy's name and

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18   Petition for Cancellation ¶ 9; Sandler Decl. ¶ 3.

19   Sandler Decl. ¶¶ 2-3.

20   Kuhn Decl. ¶¶ 22, 24, 26-27, 36-39; Sandler Decl. ¶¶ 11, 13.

21   Kuhn Decl. ¶ 26; Sandler Decl. ¶ 11.

22   Kuhn Decl. ¶¶ 22, 24; Sandler Decl. ¶ 11.

23   Chestek Decl. Exh. 2, Eben Moglen, *Twin Peaks and the GPL*, Software Freedom Law Center (Sept. 17, 2012), https://www.softwarefreedom.org/blog/2012/sep/17/twin-peaks-and-the-gpl/ ; Exh 3, *A Legal Issues Primer for Open Source and Free Software Projects*, Software Freedom Law Center (June 4, 2008), http://softwarefreedom.org/resources/2008/foss-primer.html; Exh. 4, Eben Moglen & Mishi Choudhary, *Software Freedom Law Center Guide to GPL Compliance 2nd Edition*, Software Freedom Law Center (Oct. 31, 2014), https://www.softwarefreedom.org/resources/2014/SFLC-Guide_to_GPL_Compliance_2d_ed.html.

trademark. The first Conservancy learned of SFLC's concern, which will be shown is a faux one, was when

it received the Petition to Cancel.

During all that time, before and after filing the application for the SOFTWARE FREEDOM

CONSERVANCY trademark, the mark's publication, and its registration, Conservancy continued to offer

the services it was created for, successfully encouraging new projects to join and expending much time

and effort in marketing and promotion, creating a new brand image, raising more money, spending more

money to conduct its branded activities and raise more money, and doubling the number of

employees.[24]

<div align="center">Argument</div>

I. Legal Standard Common to All Defenses

Summary judgment is an appropriate method of disposing of cases in which there are no

genuine disputes of material fact and the moving party is entitled to judgment as a matter of law. *Ava*

Ruha Corp. v. Mother's Nutritional Ctr., Inc., 113 USPQ2d 1575, 1579 (TTAB 2015). In reviewing a motion

for summary judgment, the evidentiary record and all reasonable inferences to be drawn from the

undisputed facts must be viewed in the light most favorable to the nonmoving party. *Id.*

Conservancy is moving for summary judgment on laches, acquiescence, equitable estoppel and

unclean hands. The first three are statutory defenses. Lanham Act § 19, 15 U.S.C. § 1069 (2012). The

defenses are with respect to the party's registration of a mark, not to a party's use of the mark. *Lincoln*

Logs Ltd. v. Lincoln Pre-Cut Log Homes, Inc., 971 F.2d 732, 734, 23 USPQ2d 1701, 1703 (Fed. Cir. 1992).

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24   Kuhn Decl. ¶¶ 31-38; Sandler Decl. ¶¶ 15-21.

Where a period of delay is an element of the defense – in this case, the defenses of laches and acquiescence – the time period for which one measures delay is from the date a mark was published for opposition (if the petitioner had actual knowledge of its use or publication), or in the absence of such actual knowledge, from the date of registration. *Ava Ruha Corp.*, 113 USPQ2d at 1580 (laches); *Vujovic v. Octop*, 2015 TTAB LEXIS 408 (TTAB Sept. 29, 2015) (acquiescence); TBMP § 311.02(b) (June 2017).

II. The Petitioner's Claim is Barred by Laches

Laches is (1) an unreasonable delay in assertion of one's rights against another; and (2) material prejudice to the latter attributable to the delay. *Lincoln Logs Ltd.*, 971 F.2d at 734, 23 USPQ2d at 1703. Where, however, there is "inevitable confusion," the laches defense does not apply. *Teledyne Techs., Inc. v. Western Skyways, Inc.*, 78 USPQ2d 1203, 1212 (TTAB 2006), *aff'd* 208 F. App'x 886, 888 (Fed. Cir. 2006).

With respect to the beginning of the laches period, the Petitioner, of course, was aware of Conservancy because it created Conservancy, provided legal services to Conservancy for many years, and routinely interacted with Conservancy, continuing to this day.[25] The laches period therefore began to run upon the publication of the Registrant's mark, July 10, 2012, ending only with the Conservancy's receipt of SFLC's petition to cancel the SOFTWARE FREEDOM CONSERVANCY trademark registration, more than five years later.

SFLC filed its petition to cancel the Conservancy mark three days (one business day) before the five-year anniversary of the date of registration.[26] As the Board is well aware, after the five year anniversary of registration, a claim for cancellation based on likelihood of confusion is not permitted.

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25   *See generally* Kuhn Decl.; Sandler Decl.

Trademark Act § 14, 15 U.S.C. § 1064 (2012) (listing bases for cancellation available after five years, which does not include likelihood of confusion); *Otto Int' Inc. v. Otto Kern GmbH*, 83 USPQ2d 1861, 1862-63 (TTAB 2007). Thus, had the petition to cancel been filed four days later,[27] Conservancy would have no need for a laches defense because the claim could not have been brought. Thus the delay here, from the date of publication to the five year anniversary, five years and 11 weeks, could not have been any longer, and therefore could not have been any more unreasonable. *See Ava Ruha Corp.,* 113 USPQ2d at 1581 (delay of 3 years, 2 months supported laches defense); *Teledyne Techs., Inc.* , 78 USPQ2d at 1212 (3 years, 8 months of unexplained delay held sufficient for laches); *Trans Union Corp. v. Trans Leasing Int'l, Inc.*, 200 USPQ 748, 756 (TTAB 1978) (finding laches based on a 2½ year period of delay).

This period of delay was so unreasonable it is irrational. The SFLC and Conservancy have frequently been at the same events, even speaking on the same panels, from the beginning of the laches period to the present (and of course, for many years before that). During that time, SFLC watched Conservancy develop, grow and succeed as an organization, yet every single one of its employees remained silent during the entire period, over five years' time, a period during which SFLC now claims there was confusion. No rational trademark owner, if truly experiencing likelihood of confusion, would have remained silent under these circumstances when raising the issue was trivially easy to do.

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26   *See* Registration No. 4,212,971, issuing on September 25, 2012; Petition to Cancel, filed on September 22, 2017.

27   In fact, this proceeding was not instituted until November 28, 2017, after the five-year anniversary.

The Registrant was severely prejudiced by the delay. Material prejudice is where there has been a change in the economic position of respondent during the period of petitioner's delay. *Teledyne Techs., Inc.*, 78 USPQ2d at 1211. "Economic prejudice arises from investment in and development of the trademark, and the continued commercial use and economic promotion of a mark over a prolonged period adds weight to the evidence of prejudice." *Id.*; *see also Turner v. Hops Grill & Bar Inc.*, 52 USPQ2d 1310, 1313 (TTAB 1999) ("Prejudice is generally shown by the fact that in reliance on petitioner's silence, respondent built up a valuable business and goodwill around the mark during the time petitioner never objected"); *Trans Union Corp.*, 200 USPQ at 756 (prejudice occurs where senior user takes action after the junior user builds up its business and goodwill around a mark). Further, the longer the period of delay, the more we can assume that there has been prejudice: "[A]cquiescence, whether actual or implied, in the use of a trademark over the years of a successful business, even without expansion of trade, may support a valid inference of prejudice." *Id.* citing *Ralston, Purina Co. v. Midwest Cordage Co.*, 373 F.2d 1015, 1019, 153 USPQ 73, 76 (CCPA 1967).

And Conservancy significantly expanded its trade during the laches period. In FY 2012, Conservancy had annual revenue of slightly more than $600,000,[28] but by FY 2015 had reached revenue of nearly $2 million,[29] all through extensive public fundraising efforts.[30] Since July 10, 2012, Conservancy

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28   Kuhn Decl. ¶ 31.

29   *Id.*

30   Kuhn Decl. ¶ 35; Sandler Decl. ¶ 18.

added 21 new member projects, more than doubling the number of projects under its auspices.[31] It

doubled its full-time staff during that period.[32] It created a new brand identity.[33] It uses these logoed

shirts as promotional gifts in fundraisers and asks its supporters to wear the shirts at free software

events.[34] It attends countless conferences, staffing a branded Conservancy booth, to market and

promote the Conservancy brand and its services.[35] Its employees speak at countless conferences,

competing for highly sought keynote slots, all aimed at growing its ability to provide a fiscal home for

free software projects.[36] It expends a great deal of effort garnering publicity through participation in

social media, press releases, promotional videos from noteworthy experts, blog posts and news stories,

all promoting the SOFTWARE FREEDOM CONSERVANCY brand.[37] Conservancy is now recognized as a

leader in its field, "Conservancy is well-known for its expertise in free and open source software project

administration and mentorship."[38] It has gone from startup to stable, successful organization in the past

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31   Kuhn Decl. ¶ 32; Sandler Decl. ¶ 21.

32   Kuhn Decl. ¶ 33.

33   Kuhn Decl. ¶ 34.

34   Kuhn Decl. ¶ 35; Sandler Decl. ¶ 20.

35   Kuhn Decl. ¶ 38; Sandler Decl. ¶ 19.

36   Kuhn Decl. ¶ 36; Sandler Decl. ¶ 19.

37   Sandler Decl. ¶¶ 16-17, 20.

38   Sandler Decl. Exh. 7, *Conservancy Welcomes Etherpad as a Member Project, Launches Etherpad Instance*, Software Freedom Conservancy (July 20, 2017), https://sfconservancy.org/news/2017/jul/20/etherpad/.

five-plus years: "Conservancy will help our project 'grow up' and give us the stability around critical services and raised funds that we need."[39]

As can be seen from the marks themselves, which are not identical, the goods and services, which are not even in the same class, and the 10+ years of coexistence as discussed in detail in this brief, this is not a case where there could be inevitable confusion. *See*, *e.g.*, *Teledyne Techs., Inc.*, 78 USPQ2d at 1212 (holding that, while the marks were identical and there was likelihood of confusion, there was not inevitable confusion because the goods were commercially related but not identical, the purchasers were sophisticated, and there was no actual confusion), *aff'd* 208 F. App'x 886, 888 (Fed. Cir. 2006); *Hitachi Metals Int'l, Ltd. v. Yamakyu Chain Kabushiki Kaisha*, 209 USPQ 1057, 1069 (TTAB 1981) (holding that, even where goods were identical, there was no inevitable confusion where the marks looked different, sounded different, and possessed or projected different meanings).

SFLC has unreasonably delayed in raising its claim that it is harmed by the Conservancy trademark registration. Conservancy has been considerably prejudiced by the delay, putting time, money and effort into growing Conservancy's services and brand. The Petition to Cancel must therefore be dismissed on the basis of laches.

III. The Petitioner Has Acquiesced to Registrant's Use of the Mark

Acquiescence is a type of estoppel where the plaintiff's conduct expressly or by clear implication consents to, encourages, or furthers the activities of the defendant. *Christian Broad. Network, Inc. v.*

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39   Sandler Decl. Exh. 7, *Conservancy Welcomes Homebrew as a Member Project,* Software Freedom Conservancy (Feb. 22, 2016), https://sfconservancy.org/news/2016/feb/22/homebrew-joins/.

ABS-CBN Intl., 84 USPQ2d 1560 (TTAB 2007). It is similar to laches; the difference is that laches denotes

passive consent and acquiescence denotes active consent. *Coach House Rest., Inc. v. Coach & Six Rests.,*

Inc., 934 F.2d 1551, 1558, 19 USPQ2d 1401, 1404 (11th Cir. 1991). Therefore, proof of acquiescence

requires showing (1) that plaintiff actively represented that it would not assert a right or a claim; (2) that

the delay between the active representation and assertion of the right or claim was not excusable; and

(3) that the delay caused defendant undue prejudice. *Id.*

  SFLC chose the "Software Freedom Conservancy" name for the Registrant. By design,

Conservancy was an entity entirely independent from SFLC.[40] SFLC proudly announced the establishment

of Conservancy, "The Software Freedom Law Center (SFLC), provider of pro-bono legal services to

protect and advance Free and Open Source Software (FOSS), today announced it has established the

Software Freedom Conservancy to provide free financial and administrative services for a collection of

FOSS projects through a single entity."[41] When Kuhn left SFLC to work full-time for Conservancy, SFLC

praised Conservancy's services and bragged about providing legal services to Conservancy: "SFLC is glad

to provide its pro-bono legal services to organizations like Conservancy, which provides essential non-

profit management services to Free Software projects."[42]

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40 Petition for Cancellation ¶ 10.

41 Chestek Decl. Exh.1, *Software Freedom Law Center Launches Conservancy*, Software
Freedom Law Center (Apr. 3, 2006), https://www.softwarefreedom.org/news/2006/apr/03/conservancy-launch/.

42 Kuhn Decl. Exh. 4.

Not only have Conservancy and SFLC co-existed for eleven years, but throughout that time SFLC actively encouraged Conservancy's activities and continues to do so to this day. In September 2012, SFLC publicly called on Conservancy to investigate a breach of a free software license, as it was doing.[43] On October 31, 2014, at the invitation of SFLC, Sandler spoke at the SFLC's 10th Anniversary Conference.[44] The topic was "Organizing the FOSS Entities," a topic on which SFLC must have considered Sandler an expert.[45] The SFLC's materials for the conference described her as "Executive Director of the Software Freedom Conservancy, the nonprofit home of dozens of free software projects."[46] The Executive Director of SFLC, Eben Moglen, introduced the session in which Sandler participated and Mishi Choudhary, then and current Legal Director of SFLC, was the moderator of the panel.[47] During the session, Sandler spoke about the work that Conservancy was doing.[48]

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[43]   Chestek Decl. Exh.2, Eben Moglen, *Twin Peaks and the GPL*, Software Freedom Law Center (Sept. 17, 2012), https://www.softwarefreedom.org/blog/2012/sep/17/twin-peaks-and-the-gpl/; ("SFLC will now begin an investigation of Twin Peaks' products, to ascertain whether any of our clients' rights are being infringed through the violation of FOSS licenses. We hope that other organizations around the world, including GPL-violations.org and the Software Freedom Conservancy will do likewise.").

[44]   Sandler Decl. ¶ 11.

[45]   *Id.*

[46]   *Id.* Exh. 4.

[47]   Sandler Decl. ¶ 11.

[48]   *Id.*

At the same time as the conference, SFLC published its "Software Freedom Law Center Guide to

GPL Compliance, 2nd Edition."[49] In a section on license compliance, the SFLC promoted the services

performed by Conservancy: "The organizations traditionally bringing complaints of copyleft non-

compliance (in historical order, the Free Software Foundation, GPL-violations.org, the Software Freedom

Law Center, and the Software Freedom Conservancy) all fully investigate and verify complaints referred

to them before making contact with apparently non-complying parties." That document remains

available on the SFLC web page at the time of the filing of this motion. Another document, the SFLC

Legal Issues Primer, which also promotes the services of Conservancy, remains a highlighted publication

on the SFLC "Publications" page.[50]

Thus, SFLC was never just silent about Conservancy's continued use of the name that SFLC gave

it, SFLC actively promoted Conservancy and its work. There can be no implication from this behavior but

that SFLC was encouraging Conservancy to continue to perform the services it had always performed,

using the same name it had used since its inception to do so.

If SFLC at some point objected to the Conservancy name, it did not share this belief with

Conservancy. There have been a number of Conservancy actions that SFLC didn't like and SLFC did not

hesitate to bring them to Conservancy's attention. For example, in a conversation with Kuhn in February

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49   Chestek Decl. Exh. 4, Eben Moglen & Mishi Choudhary, *Software Freedom Law Center Guide to GPL Compliance 2nd Edition*, Software Freedom Law Center (Oct. 31, 2014), https://www.softwarefreedom.org/resources/2014/SFLC-Guide_to_GPL_Compliance_2d_ed.html.

50   Chestek Decl. Exh 3, *A Legal Issues Primer for Open Source and Free Software Projects*, Software Freedom Law Center (June 4, 2008), http://softwarefreedom.org/resources/2008/foss-primer.html.

2013, Moglen criticized Conservancy, claiming it would lose its non-profit status by accepting certain

donations, but never in that conversation said anything about the Conservancy trademark or confusion.[51]

Moglen does not hold back when publicly complaining about Conservancy's view on free software

license enforcement, going so far as to call Conservancy jihadists: "But some of my angry friends, dear

friends, friends I really care for, have come to the conclusion that they're on a *jihad* for Free Software."[52]

Sandler had a lengthy exchange with Moglen, spanning years, where he continuously complained about

the manner in which some SFLC Creative Commons-licensed materials had been republished.[53] But there

was not just the absence of any mention of the trademark; in the last email from Moglen in the thread,

on May 18, 2016, he stated affirmatively that he had no problem at all with Conservancy: "You and

Bradley, *not the Conservancy,* are the subjects of complaint...."[54]

The delay between the active representation and assertion of the right or claim was not

excusable. As discussed with laches, SFLC could not have delayed any longer before petitioning for

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51   Kuhn Decl. ¶ 23.

52   Chestek Decl., Exh. 5, Eben Moglen, *Whither (Not Wither) Copyleft*, Software Freedom
Law Center (Oct. 28, 2016), https://www.softwarefreedom.org/resources/2016/whither-copyleft.html.
The screed does not mention Conservancy by name, but later identifies these "friends" as "people in
many cases whom I trained ...."

53   Sandler Decl. ¶ 12. The "Creative Commons" is a set of licenses that are similar to free
software licenses but designed for use with non-software creative content, *i.e.,* they allow the reuse of
copyrighted materials provided that certain conditions, like providing attribution and further sharing, are
met. *See Licensing Types*, Creative Commons, https://creativecommons.org/share-your-work/licensing-
types-examples/ (last visited Dec. 4, 2017).

54   Sander Decl. Exh. 5 (emphasis added).

cancellation of the Conservancy registration. And, also as discussed above with respect to laches, Conservancy has poured time, money and effort into building Conservancy as an entity and a brand. Conservancy would be unduly prejudiced if it had to change its name and start all over again.

Thus, SFLC actively represented, through deed and word, that it would not assert a right or a claim. The delay between these representations over the many years and its about-face, raised for the first time in the Petition to Cancel, was not excusable. Conservancy expended time, money and effort building brand notoriety and strength during the delay, and will be unduly prejudiced if that work must be foregone. The Petition to Cancel must therefore be dismissed on the basis of acquiescence.

IV. The Petitioner Is Equitably Estopped From Bringing Its Claim

Equitable estoppel requires showing (1) misleading conduct, which may include not only statements and action but silence and inaction, leading another to reasonably infer that rights will not be asserted against it; (2) reliance upon this conduct; and (3) due to this reliance, material prejudice if the delayed assertion of such rights is permitted. *Lincoln Logs Ltd.*, 971 F.2d at 734, 23 USPQ2d at 1703.

SFLC's misleading conduct, and the material prejudice to Conservancy, have been established. The facts also demonstrate that Conservancy relied on the SFLC's conduct – how could it not? This is not a case where the affronted party was a stranger; instead, SFLC was recognizing Conservancy for its work

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and calling on it to continue,[55] which Conservancy did, doing the same work it was created to do,[56] and

for which its mark is registered. Dozens of times Conservancy and SFLC were at the same events, where

Conservancy did fundraising, promoted its services to free software projects, and advancing its

charitable mission, using the only trademark it ever had, a name selected for it by the petitioner.[57] SFLC

had Conservancy advocate and promote its work at SFLC's very own conference.[58] At no point in time

was there a breath of a suggestion that Conservancy should not continue to do the work it had always

done using the name it had always used.

 The Petition to Cancel must therefore be dismissed on the basis of equitable estoppel.

V. <u>The Petitioner Comes To This Forum With Unclean Hands, Barring Its Claims</u>

 The doctrine of "unclean hands" imposes upon a complainant the burden of showing
not only that he has a good and meritorious cause of action, but that he comes into
court with clean hands or, as the maxim is stated, "he who comes into equity must come
with clean hands." That is, as stated in Precision Instrument Manufacturing Company et

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55 Chestek Decl. Exh. 2, Eben Moglen, *Twin Peaks and the GPL*, Software Freedom Law
Center (Sept. 17, 2012), https://www.softwarefreedom.org/blog/2012/sep/17/twin-peaks-and-the-gpl/
(calling on Conservancy to do copyleft license enforcement); Exh 3, *A Legal Issues Primer for Open
Source and Free Software Projects*, Software Freedom Law Center (June 4, 2008),
http://softwarefreedom.org/resources/2008/foss-primer.html (promoting the services of Conservancy);
Exh. 4, Eben Moglen & Mishi Choudhary, *Software Freedom Law Center Guide to GPL Compliance 2nd
Edition*, Software Freedom Law Center (Oct. 31, 2014),
https://www.softwarefreedom.org/resources/2014/SFLC-Guide_to_GPL_Compliance_2d_ed.html
(describing copyleft enforcement work done by Conservancy).

56 Kuhn Decl. ¶ 28.

57 Kuhn Decl. ¶¶ 10-12; Sandler Decl. ¶ 5.

58 Sandler Decl. ¶ 11.

al. v. Automotive Maintenance Machinery Company, 324 U.S. 806, 65 S. Ct. 993, 89 L. Ed. 1381, 165 USPQ 133, 1945 Dec. Comm'r Pat. 582 (Sup. Ct. 1945),

> ". . . . Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim by the chancellor".

Hitachi Metals Int'l, 209 USPQ at 1065-66 (ellipses in original). The conduct must rise to the level of

"unconscionable or highly improper or inequitable." *Id.* The defense of unclean hands, though often

based on allegations of fraud, misrepresentation of source or violation of antitrust laws, "may result

from any imaginable immoral or illegal conduct." *Hornblower & Weeks, Inc. v. Hornblower & Weeks, Inc.*,

60 USPQ2d 1733, 1738 (TTAB 2001), quoting 3 J. Gilson, Trademark Protection and Practice § 8.12[13]

(1999).

> The governing principle is that whenever a party who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy.

Keystone Driller Co. v. Gen. Excavator Co., 290 U.S. 240, 244-45, 54 S. Ct. 146, 147 (1933).

SFLC chose the name "Software Freedom Conservancy" and filed the legal documents forming

the Software Freedom Conservancy, Inc.[59] It then proceeded to provide Conservancy with legal services,

including trademark services.[60] It celebrated Conservancy's accomplishments, encouraging its efforts.[61]

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59   Kuhn Decl. ¶¶ 10-12, 28; Sandler Decl. ¶¶ 5-7.

60   Kuhn Decl. ¶¶ 14, 19.

61   Kuhn Decl. ¶ 16; Sandler Decl. ¶¶ 9-11.

For five years, until 2010, SFLC hosted the Conservancy's services on its own website, at

conservancy.softwarefreedom.org.[62]

It is unconscionable that SFLC created Conservancy, for ten years Conservancy has performed

the work that SFLC created it to do, yet now SFLC is willing to destroy the very entity it created.

"Destroy" is not an understatement; SFLC brought a specious cancellation action, not because there is

any confusion, but solely for the purpose of forcing Conservancy to expend the very limited resources of

a charitable non-profit. Whether it succeeds on the merits or not it doesn't matter; the time, money and

efforts Conservancy must spend defending itself may do the job instead.[63]

But it is more egregious than that. SFLC has a gripe – or perhaps many gripes – against Kuhn and

Sandler, former employees of SFLC and now employees of Conservancy. But none of the perceived

wrongs have anything to do with Conservancy's name. Moglen said that explicitly in May 2016, "You and

Bradley, not the Conservancy, are the subjects of complaint...."[64] Had SFLC truly thought at any point, for

example upon Moglen's departure from the Conservancy board, that the Conservancy name was a

problem it would have said something to someone. After all, SFLC demonstrated that it had no problem

complaining to Conservancy about slights both large and small, and yet in more than six years since

Moglen's departure from the Conservancy board it never breathed a word about the name.

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62   Kuhn Decl. ¶ 13; Kuhn Decl. Exh. 2.

63   Sandler Decl. ¶ 23.

64   Sandler Decl. Exh. 10.

And Moglen makes no bones about it. After the SFLC filed this action Moglen stated in an

interview with the newspaper *The Register* that he has no problem with the Conservancy name. *The*

Register reports: " 'I have been trying for three years to have a conversation about some differences with

some former employees,' Moglen told the *The Register* in a phone interview.... Moglen said there were

limits to what he could say about a pending case. However, he said that any outcome he could imagine

that involves [Conservancy] would have the organization 'continue to exist and flourish under its existing

name.'"[65]

"*Continue to exist and flourish under its existing name.*" These words, spoken by the Executive

Director of the petitioner *after* it filed the petition to cancel the registration of the Conservancy mark,

illustrate that the petition was filed, not because there is any confusion at all, but in an abuse of this

legal process, wasting the Board's time and resources, solely to inflict pain on former SFLC employees by

attacking the organization that they are passionate about. This is the archetype of unclean hands. *See*

Aptix Corp. v. Quickturn Design Sys., 269 F.3d 1369, 1374 (Fed. Cir. 2001) (equitable doctrine of unclean

hands bars a party from asserting claims where that party engaged in litigation misconduct). The Petition

to Cancel should therefore be dismissed on the basis of unclean hands.

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[65]   Chestek Decl. Exh. 6, Thomas Claburn, *Open-Source Defenders Turn on Each Other in 'Bizarre' Trademark Fight Sparked by GPL Fall Out* (Nov. 20, 2017) https://www.theregister.co.uk/2017/11/20/foss_sflc_sfc_gpl_trademark/.

Conclusion

For all the reasons given above, the Registrant's Motion for Summary Judgment on the bases of

laches, acquiescence, equitable estoppel and unclean hands should be GRANTED.

Respectfully submitted,

Dated: December 11, 2017   By: _____

                           Pamela S. Chestek
                           Chestek Legal
                           PO Box 2492
                           Raleigh, NC 27602
                           Attorney for Registrant
                           pamela@chesteklegal.com

I hereby certify that a true and complete copy of the foregoing RESPONDENT'S MOTION FOR SUMMARY JUDGMENT ON ITS AFFIRMATIVE DEFENSES has been served on Software Freedom Law Center by mailing said copy on December 11, 2017, via electronic mail to:

Daniel Byrnes
Software Freedom Law Center
1995 Broadway, 17th Floor
New York, NY 10023

Email: dbyrnes@softwarefreedom.org

By: _____
    Pamela S. Chestek

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 4212971
Mark: SOFTWARE FREEDOM CONSERVANCY
Registration date: September 25, 2012

Software Freedom Law Center
Petitioner,
v.
Software Freedom Conservancy
Registrant.

Cancellation No. 92066968

DECLARATION OF BRADLEY M. KUHN
IN SUPPORT OF RESPONDENT'S MOTION FOR SUMMARY JUDGMENT
ON ITS AFFIRMATIVE DEFENSES

I, Bradley M Kuhn, declare as follows:

1. I am over the age of 18 and if called upon to do so could testify competently about the facts set forth in this declaration. The facts stated herein are made on my personal knowledge.

2. I am currently the President and Distinguished Technologist of the Software Freedom Conservancy ("Conservancy"), the Respondent in this matter. I have been President of Conservancy from shortly after its inception to the present, as well as holding other positions in the organization that will be described in more detail below.

3. Conservancy is a not-for-profit charity that provides a non-profit home and infrastructure for FLOSS ("Free, Libre and Open Source Software") projects. This same field is also referred to as "FOSS," dropping the word "libre" from the acronym.

4. Conservancy takes care of the FLOSS projects' administrative and management needs that do not relate directly to software development and documentation. There are currently 46 member projects, as listed at https://sfconservancy.org/projects/current/.

5. I began work in the software freedom movement in the 1990s as a volunteer for a 501(c)(3) charity, the Free Software Foundation ("FSF") based in Boston, MA.

6. "Free Software" is a term that is used to describe software that has a copyright license that ensures the recipient of the software has the freedom to run, copy, distribute, study, change and improve the software, the concept captured in what are known as the "four essential freedoms":

   • The freedom to run the program as you wish, for any purpose.

   • The freedom to study how the program works, and adapt it to your needs. Access to the source code is a precondition for this.

   • The freedom to redistribute copies so you can help your neighbor.

   • The freedom to improve the program, and release your improvements to the public, so that the whole community benefits. Access to the source code is a precondition for this.

   I believe the first formal publication of these four freedoms was in Vol. 1 No.1 of the GNU'S Bulletin published in February 1986, archived at https://www.gnu.org/bulletins/bull1.txt. The four freedoms remain the foundational principles of the FSF and the free software movement. Exhibit 1 contains a true and correct copy of the aforementioned GNU's Bulletin, and a true and correct copy of FSF's modern incarnation of the four freedoms found at http://www.gnu.org/philosophy/free-sw.html. These were captured on December 8, 2017.

7. In 1999, I was hired as a part-time remote employee of the FSF, and in 2001, I was named Executive Director of the FSF and hired full time in that year.

8. I first communicated with Eben Moglen, the Executive Director of the Petitioner Software Freedom Law Center ("SFLC"), in September 1999 when I was a volunteer for the FSF. I first met him in person at an FSF Board Meeting on April 20, 2001, when Moglen was a member of FSF's Board of Directors and I was FSF's Executive Director.

9. SFLC was formed in 2005 and I was employed by SFLC from March 1, 2005 through September 30, 2010. While employed by SFLC, my duties included all primary work on technological infrastructure for SFLC and policy work with SFLC attorneys to analyze and understand the FOSS community.

10. In late 2005, I recall a planning meeting in Daniel Ravicher's office at the SFLC for naming a new organization, which would serve as a non-profit corporate home to software freedom projects that had no incorporated entity yet. Ravicher was the Legal Director of the SFLC at the time. I recall that Karen Sandler and James Vasile (both staff attorneys for SFLC) Ravicher, and I brainstormed about various names using a flip chart. Ravicher wrote various names on the chart, and ultimately hung the sheet, with a marking next to "Software Freedom Conservancy Trust" up in his office.

11. I recall a later time, either later that day or a few days later, when people were examining the chart in Ravicher's office. Moglen was present at this time and Ravicher identified for him that consensus had been reached that the new organization should be called the "Software Freedom Conservancy Trust."

12. At some point in February 2006, I recall being informed by Vasile that the term "Trust" held special meaning under New York law, and, as such, the word "Trust" could not be used in the name of a charitable, not-for-profit, 501(c)(3) organization if incorporated in New York. I was informed that the name would be shortened to "Software Freedom Conservancy."

13. At some point in late March 2006, I was assigned as part of my SFLC duties the task of creating the technological infrastructure for Software Freedom Conservancy. I was instructed to create the website http://conservancy.softwarefreedom.org/, managed in the same manner and system as SFLC's primary website, http://softwarefreedom.org/. SFLC hosted the Conservancy website until late 2010. Exhibit 2 contains a true and correct copy of archive.org's page showing the times from 2006-2010 the Wayback Machine downloaded the content at the website, as captured on October 27, 2017.

14. On September 15, 2006 Conservancy, now as its own separate legal entity, formally engaged SFLC as its counsel. Exhibit 3 contains a true and correct copy of the engagement letter that I recall signing in my role as Conservancy's President.

15. On July 8, 2010, the SFLC and I reached an agreement where I would leave SFLC and become the first full-time employee of Conservancy. I ended my employment at SFLC on September 30, 2010, and began full-time volunteer work for Conservancy on October 1, 2010. Subsequently, on January 1, 2011, I became a full-time, paid employee with Conservancy.

16. Conservancy published a press release on October 4, 2010 announcing me as its first full-time Executive Director. Moglen provided a quote for that press release. The press release has been published on Conservancy's website since that date. Attached in Exhibit 4 is a true and correct copy of that press release, entitled "Software Freedom Conservancy Appoints Full-Time Executive Director, Software Freedom Conservancy" as it appeared on December 8, 2017. I verify that the text of the press release remains as it appeared originally on October 4, 2010.

17. On July 1, 2011, Moglen sent an email to Conservancy's directors indicating that SFLC formally withdrew as legal counsel for Software Freedom Conservancy. Exhibit 5 contains a true and correct copy of that email as I received it. There was no mention of any problem with Conservancy's continued use of the SOFTWARE FREEDOM CONSERVANCY trademark.

18. On September 2, 2011, Software Freedom Conservancy offered the position of General Counsel to Anthony K. Sebro, Jr., which he subsequently accepted. Sebro is currently the General Counsel for Conservancy.

19. Over the years, SFLC, when it served as Software Freedom Conservancy's law firm, handled various trademark registrations for a number of our member projects. These include:

   a) Reg. No. 3408625 ("WINE")

   b) Reg. No. 3408632 (Wine logo)

   c) Reg. No. 3672907 (Inkscape logo)

   d) Reg. No. 3672917 ("INKSCAPE")

   e) Reg. No. 3672956 ("DRAW FREELY.")

   f) Reg. No. 3657241 ("SUGAR LABS")

   g) Reg. No. 3837387 ("SUGAR ON A STICK").

20. The first task that I assigned Sebro after he was hired was to review the trademark portfolio of Conservancy. Specifically, I asked Sebro to register trademarks for any key brands and names that we and our projects were already using. This instruction led to Sebro filing an application for the subject SOFTWARE FREEDOM CONSERVANCY trademark on November 29, 2011, which ultimately issued as Reg. No. 4,212,971. It was published for opposition on July 10, 2012.

21. Since my departure from SFLC, I have been in close contact with many employees of SFLC, as described in more detail below.

22. For the Linux Foundation Collaboration Summit ("LFCS") 2012, an annual event in our community, I chaired a track about Legal and Licensing issues in FOSS. I frequently look for such opportunities to work publicly in our community to raise the profile of Conservancy in our community. On February 25, 2012, I sent an invitation to Aaron Williamson, an attorney at SFLC, an encouragement to submit a proposal for a talk to to the LFCS 2012. Williamson replied with a submission on February 27, 2012 in email. Williamson's proposal was entitled "The evolving form of free software organizations." In his email, Williamson asked to talk about the topic in detail with me before presenting. I recall that I did that, and that Williamson presented at that conference, which was on April 3-5, 2012. True and correct copies of these emails are attached as Exhibit 6, and make no mention of any concern about the Conservancy trademark or name.

23. On February 4, 2013, when sitting with a colleague named Richard Fontana in the Brussels, Belgium airport lounge, Moglen arrived and greeted us. Fontana and I sat and spoke with Moglen for approximately one hour. While Moglen criticized Software Freedom Conservancy during this meeting (specifically, claiming that we may be in danger of losing of our 501(c)(3) status due to our reliance on large grants—a claim which I disputed with him), at no time during the conversation did Moglen indicate any concerns about Software Freedom Conservancy's name, branding, or trademark. Moglen was coincidentally on the same (delayed) flight, Delta 141 from BRU to JFK, so while waiting due to delay, we all remained in the small Brussels airport lounge for hours, and then boarded the same eight-hour flight. At no time during this trip, nor at any other time, did Moglen every inform me of any concerns, complaints, or issues about Software Freedom Conservancy's name, trademark, or branding.

24. For LFCS 2013, I co-chaired the track about Legal and Licensing issues in FOSS. I again invited Williamson via email to submit, on February 6, 2013. On February 7, 2013, Williamson emailed in reply saying that he had submitted. True and correct copies of these emails are attached as

Exhibit 7. I recall that at LFCS 2013, I, Williamson, and Conservancy's Sebro all participated in the formal programming. In particular, I recall that Williamson was present for both my panel and Sebro's talk. Sebro and I also joined Williamson for dinner one of the evenings of the event. At no time at LFSCS 2012 nor 2013, nor at its related social events, nor in any email correspondence, nor in any conversations, did Aaron Williamson ever raise any issue, concern, or complaint regarding the name, branding, or trademark of Software Freedom Conservancy.

25. On October 1, 2014, Ian Sullivan, who was at the time Moglen's assistant and wrote from <sullivan@softwarefreedom.org>, sent email to me at <bkuhn@sfconservancy.org> inviting me to attend the SFLC's 10th Anniversary Conference, which took place on October 31, 2014. In his email, Sullivan writes: "I wanted to make sure you got an invitation to the anniversary conference" and "I wanted to make sure you heard about it and know you are welcome." True and correct copies of emails I received from Ian Sullivan regarding this conference are provided in Exhibit 8. I was unable to attend.

26. On May 18, 2016, Moglen, Mishi Choudhary (then and currently Legal Director of SFLC), and I participated in a panel, on stage together, entitled "Aligning Patents and Open Source" at the O'Reilly Open Source Convention ("OSCON") 2016 in Austin, Texas. Choudhary, Moglen, and I were all listed on the OSCON 2016 website to announce our joint panel on patents. Choudhary and Moglen were listed as affiliated with SFLC, and I was listed as affiliated with Software Freedom Conservancy. The panel lineup appears at https://conferences.oreilly.com/oscon/oscon-tx-2016/public/schedule/detail/48549 and a true and correct copy of that panel lineup, as captured on December 7, 2017, is in Exhibit 9. I recall that the panel listing, which I viewed many times, has remained substantively similar since the OSCON 2016 conference schedule was announced in early 2016. During the panel itself, we also introduced ourselves and our history and affiliations.

27. There was a reception in the same room immediately following the panel. Both Choudhary and I attended that reception. During that reception on May 18, 2016, I was speaking to another attendee about a Software Freedom Conservancy fundraising event being held the following evening. We were speaking particularly about how a swimming pool would be available. Choudhary, who was standing nearby, joined the conversation and asked jovially if I would be swimming at the event. I replied, "No, **I'm** not going to swim! But you should sign up as a Software Freedom Conservancy supporter, Mishi, and attend the event tomorrow!" At no time

during these interactions at OSCON 2016 did Choudhary or Moglen mention any concerns, issues, or problems regarding Software Freedom Conservancy's branding or name.

28. Conservancy's New York State Certificate of Incorporation, a true and correct copy of which is attached in Exhibit 10, was drafted for us by SFLC, which was our law firm at the time of our incorporation. The Certificate of Incorporation describes Software Freedom Conservancy's charitable purposes as follows:

    1. To endeavor to monitor and improve the quality of currently existing publicly available software;

    2. To foster, promote and increase access to software systems available to the general public and promote the general right to use, change or distribute Free and Open Source Software;

    3. To solicit, collect and otherwise raise money and to expend such funds in furtherance of the goals and activities of the Corporation;

    4. To promote the use, development, and improvement of Free and Open Source Software; and

    5. To solicit, receive and maintain, invest and re-invest funds of real and personal property and to contribute its income and so much of the principal, in and as deemed advisable, for the purposes provided in (a) through (d) of the FIRST paragraph of the corporation's Certificate of Incorporation.

    Software Freedom Conservancy's work and mission have not changed since its inception.

29. Our primary work is fiscal sponsorship services for software freedom projects, for which we raise funds. Those funds are, in turn, spent to create new FOSS and to promote and defend existing FOSS projects.

30. To summarize my tenure with Conservancy, from April 2006 until October 1, 2010, I was an unpaid, part-time volunteer President of Conservancy. During late 2010, I was a full-time volunteer President and Executive Director. From 2011-2017, I worked as a full-time employee of Conservancy – as its President throughout – and also as its Executive Director from early 2011 through early 2014, and as Distinguished Technologist since 2014.

31. Software Freedom Conservancy annual revenue has grown substantially since 2012. In our Fiscal Year ("FY") 2012, which ended on March 1, 2013, our Form 990 shows our annual revenue was only $617,134. In FY 2015 (our most recent Form 990), our revenue was nearly $2 million. From March 1, 2013 through March 1, 2016, our expenses, as shown on our annual Form 990s for those FY's, totaled $2,564,116.

32. As discussed in Paragraph 29, our primary work is fiscal sponsorship for key FOSS projects and initiatives. Since July 10, 2012, we've added 21 new member projects who now all operate under Software Freedom Conservancy's auspices. Thus, we have more than doubled our member projects since July 10, 2012. We have spent substantial effort recruiting new member projects and building our brand as the premier and fullest service fiscal sponsor in the field of FOSS.

33. Since July 10, 2012, we have doubled our full-time paid staff. Twice annually, we run the Outreachy internship program, described on https://outreachy.org/, which funds underrepresented individuals in technology with internships to contribute to FOSS. Since 2015, we have funded 194 such interns. Annually, we coordinate numerous community conferences on behalf of our member projects, include the C++ Now conference (formerly BoostCon) which we have run annually since 2008.

34. In 2012, Conservancy hired an artist to design a new logo graphic and word mark for the organization, using only FOSS, including our member project, Inkscape, for the process. On February 28, 2013, we published a blogpost at https://sfconservancy.org/blog/2013/feb/28/new-logo/ announcing our new brand identity. Attached as Exhibit 11 is a true and correct copy of that blog post captured on December 8, 2017. I verify that the blog post text has remained the same since its initial publication.

35. Since July 10, 2012, we have engaged in extensive fundraising efforts under the name "Software Freedom Conservancy." These fundraising efforts are primarily responsible for the growth in revenue discussed in Paragraph 31. Most notably, we launched a fundraiser on May 1, 2013 to fund our work creating FOSS for the needs of non-profits in the area of accounting software. Exhibit 12 contains a true and correct copy of https://sfconservancy.org/news/2013/may/01/npo-accounting/ captured on December 8, 2017. I verify that the text of the fundraising announcement is as it appeared when the fundraiser was launched, but do note that the fundraising goal at the top of the exhibit is for our current 2017 fundraiser, not the older fundraiser described in the post itself. Annually since December 2014,

we have run an individual Supporter campaign, which encourages individuals to give $120/year to support the work of Software Freedom Conservancy. Each Supporter receives a t-shirt with our name and logo, which we strongly encourage them to wear at conferences and events. The Software Freedom Conservancy Supporter program is currently our primary funding source.

36. Since July 10, 2012, I have regularly attended and spoken at key conferences in the FOSS community. As a primarily virtual community, conferences are the key place where FOSS contributors see each other. I therefore attend and speak at many conferences, as it is the best opportunity to promote the services of Conservancy to software projects who attend the conferences, and also to solicit contributions to support Conservancy. Specifically, I gave invited keynotes at Debian Conference ("DebConf") 2015, The International Conference on Open Source Systems in 2016, The International Symposium on Open Collaboration in 2016, and the Free and Open Source Developer's European Meeting (FOSDEM) in 2017. I was on panel discussions at LFCS 2013, FOSDEM 2013, OSCON 2013, 2014, and 2016 (the last of which is discussed in detail in Paragraphs 26-27).I gave track-level talks in response to public Calls for Participation at FOSSCON 2012, LinuxCon North America 2012, Open World Forum 2012, LibrePlanet 2013-2017, LinuxCon Europe 2012, Embedded Linux Conference 2014, LibrePlanet 2014, Southern California Linux Expo (SCALE) 2014, FOSDEM 2014, 2015, and 2016, DebConf 2016, LinuxFest Northwest 2016, and LinuxConf Australia 2015 and 2016, Google Summer of Code Mentor Summit 2013-2016, OSCON 2015, and Open Source Summit 2017. I also gave an invited talk at the University of Omaha in 2013. Finally, I also taught tutorials at OSCON 2016 and OSCON 2013. The tutorial at OSCON 2013 was a tutorial about non-profit organizations in FOSS, and was co-presented with leaders from many non-profit organizations.

37. At all my speaking events since October 2010, I have clearly branded my presentation slides, my conference biography, my business cards, and all other public-facing material with "Software Freedom Conservancy." I regularly pitched for attendees to donate and support Software Freedom Conservancy, and tailored my talks to bolster and build the "Software Freedom Conservancy" brand.

38. At various events, Software Freedom Conservancy has show booths, where we present literature and information about the work of our organization, and raise funds for the Supporter program (described in Paragraph 35).In these booths, we have a large banner with our name and logo. Software Freedom Conservancy had a booth at FOSDEM 2015-2016, OSCON 2014-2017, and

LibrePlanet 2015-2017. A photo taken of Conservancy's booth during OSCON 2017 is included in Exhibit 13.

39. Since July 10, 2012, there have been numerous events where the program included both a session presented by me, representing Software Freedom Conservancy, and a session presented by an SFLC representative. These include:

   a) At FOSDEM 2013, held February 2-3, 2013, both I and Moglen were speakers. (See Paragraph 23 for additional details.)

   b) At Linux Foundation Collaboration Summit 2013, held April 15-17, 2013, both I and Aaron Williamson were speakers. (See Paragraph 24 for details.)

   c) At LibrePlanet 2014, held March 22-23, 2014, both I and Moglen were speakers.

   d) At LinuxConf Australia 2015, held January 12-19, 2015, both I and Moglen were speakers.

   e) At LibrePlanet 2016, held March 19-20, 2016, both Choudhary and I were speakers, and Software Freedom Conservancy had a booth in the exhibit hall.

   f) At OSCON 2016, held May 16-19, 2016, Moglen, Choudhary and I all appeared on the same panel, and Software Freedom Conservancy had a booth in the exhibit hall. (See Paragraphs 26-27 for details.)

   g) At LibrePlanet 2017, held March 25-26, 2017, both I and Moglen were speakers, and Software Freedom Conservancy had a booth.

   h) At OSCON 2017, held May 8-11, 2017 in Austin, Texas, Sandler and I co-presented a session, and Daniel Byrnes, an attorney for SFLC and correspondent in this cancellation action, also presented another session. Software Freedom Conservancy also had a booth, as described and shown in Paragraph 38.

At no time at any of these events did any representative of SFLC raise any concern with me about Software Freedom Conservancy's name, branding, or trademark, nor raise their concerns about any confusion between the two organizations with me. To my knowledge, no one from SFLC complained to any conference organizer or attendee about such issues, nor visited any of our booths at these conferences to raise such issues.

40. As described in detail in Paragraphs 30-38, I personally and Software Freedom Conservancy as an organization have invested substantial time and resources to promote our brand and name, and to leverage our brand and name to raise additional funds to continue our charitable work.

41. As described in many Paragraphs above, at no time did anyone from SFLC take the many opportunities described herein to raise concerns, questions, issues, problems, or complaints about the "Software Freedom Conservancy" trademark, branding, or name. I relied materially on this fact when engaging in the substantial work to build Software Freedom Conservancy, its brand, and revenue. I believe that had I been aware that SFLC would seek to challenge our ability to operate under the brand and trademark of "Software Freedom Conservancy," I would have not invested my own time, nor substantial resources of the organization, in building the brand and name recognition for "Software Freedom Conservancy."

I declare that all statements made herein of my own knowledge are true and that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Bradley M. Kuhn

Dated: December 11, 2017
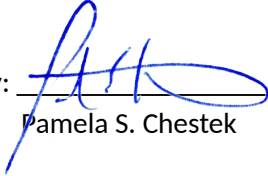
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11

<u>Certificate of Service</u>

I hereby certify that a true and complete copy of the foregoing "DECLARATION OF BRADLEY M. KUHN IN SUPPORT OF RESPONDANT'S MOTION FOR SUMMARY JUDGMENT ON ITS AFFIRMATIVE DEFENSES" has been served on Software Freedom Law Center by mailing said copy on December 11, 2017 , via electronic mail to:

Daniel Byrnes
Software Freedom Law Center
1995 Broadway, 17th Floor
New York, NY 10023

Email: dbyrnes@softwarefreedom.org

By: _____
Pamela S. Chestek

Exhibit
1

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                                                      $1.00
      -----------------------------------------------------------------
      February 1986      G N U ' S   B U L L E T I N      Volume 1 No.1
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Contents

□

February 1986   G N U ' S   B U L L E T I N   Volume 1 No.1

                          Gnu's Zoo

First and foremost there's our porcupine Richard M. Stallman. The last
of the true hackers and founder of project GNU.

Secondly there's Leonard H. Tower, Gnu's teddy bear. Len is Gnu's
first and so far only paid full time employee.

Gnu's Hawk, Robert Chassell, is the world's only generous treasurer.

Gnu has two wise old night owls, Professor Hal Abelson and Professor
Gerald Sussman. They are advisors and round out FSF's board of
directors.

Amoung our volunteer hackers there's Dean L. Elsner, our world hopping
platypus (I originally called him a kangaroo but he insists he's a
platypus). In case you haven't guessed, Dean comes from Australia.
Dean is writing Gnu's assembler.

Another Australian, Richard Mlynarik, is acting as Gnu's Emacs Guru. I'll
try calling him our kangaroo and see what happens.

Eric Albert walked in off the street on January 24. So far, he's sped
up the GNU LD command to be faster than UNIX's (it was much slower),
and is now fixing some bugs in it. After that, he'll be working on
removing fixed-length limits from GNU CPP, and also speeding it up.
Eric claims he's Gnu's humuhumunukunukuapuaa, the current state fish
of Hawaii. And we're happy to have the help of such a rare fish.

There is also Paul Rubin on the West coast. Gnu's spider, Paul weaves
Gnu Emacs reference cards and produces nifty covers for the new
version of the Gnu Emacs manual.

Me? My name's Jerry Puzo. I answer the mail and send out tapes. It
explains a lot to say I'm Gnu's turtle.

                          end

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February 1986   G N U ' S   B U L L E T I N   Volume 1 No.1

What is GNU Emacs and do you want a copy?

by Richard M. Stallman

GNU Emacs is a new implementation of the Emacs text editor.
(Recently text editors have been called "word processors" among
microcomputer users.)

Emacs is a kind of architecture for text editors, in which most
editing commands are written in an interpreted language (usually
Lisp) so that the user can write new editing commands as he goes.
This allows Emacs to have editing commands that are more powerful
or more adapted to individual uses than other kinds of editors.

Any particular editing command could be written in C, but with
Lisp it is much easier for users to change the editing commands
or to implement new editing commands. Users can also exchange
their adaptations and extensions of Emacs. The result is a library
of extensions that continues to grow.

GNU Emacs boasts an especially clean Lisp system for writing editing
commands, and an already large library of extensions.

GNU Emacs is written in C, designed for a Unix or Unix-like
kernel. It includes its own Lisp interpreter which is used to
execute the portion of the editor that is written in Lisp.

It is a fairly large program, around 525k on vaxes or 68000s, to
which must be added space for the files you are editing, undo
buffers, Lisp libraries loaded, and Lisp data such as recently
killed text, etc. This is not really a problem on a timeshared
machine because most of that 525k is shared, but on a personal
computer there may be nobody to share with. Thus, GNU Emacs
probably could not be used on an IBM PC clone for lack of memory,
unless you want to implement virtual memory in software within
Emacs itself. Perhaps on an 80286 with 1 meg of memory you can
win using their memory management.

In general, a 32-bit machine with either a meg of real memory
or virtual memory can probably run GNU Emacs, as long as a suitable
Unix system call environment is provided, simulated or imitated.

end

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February 1986   G N U ' S   B U L L E T I N   Volume 1 No.1

             Version 17 of Gnu Emacs comes with its own doctor

* Gnu Emacs version 17 is now available. See the article HOW TO GET
GNU EMACS and our Order Form elsewhere in this bulletin.

* Gnu Emacs 17 works on system V. Even subshells work.

* The online Emacs manual is available through the info command.

* Outline mode now allows the user to selectively hide or display the
subtree of an item.

* TeX and Nroff editing modes have been added.

* C editing mode has been made smarter. It now understands how to indent
else clauses.

* Consistency between modes has been improved by assigning some
commands to different keys.

* Toys. To the disassociated press has been added:

   hanoi, the (slightly) animated puzzle solver,
   yow,   a Zippy saying producer, and
   doctor, the infamous psychiatrist.

The folks on net.emacs have sent a suggestion for yowza which lets you
watch the doctor respond to yow.
                              end

          H O W   T O   G E T   G N U   E M A C S

All software and publications are distributed with a permission to
copy and redistribute. The easiest way to get a copy of GNU Emacs
is from someone else who has it. You need not ask for permission;
just copy it.

If you have access to the Internet, you can get the latest
distribution version of GNU Emacs from host: `prep.ai.mit.edu'
For more info read: `/u2/emacs/GETTING.GNU.SOFTWARE' on said host.

If you cannot get a copy in any of these ways, you can order one from
the Free Software Foundation. Please consult the accompanying Order
Form for prices and details.

Although Emacs itself is free, our distribution service is not.
The income from distribution fees goes to support the foundations's

purpose: the development of more free software to distribute just like
GNU Emacs.

Currently, all software is available for UNIX 4.2 BSD on 1600 bpi tar
tape. It runs on VAX computers, as well as several 68XXX and 32XXX
machines. Contact FSF regarding suitability of your computer system.
We encourage porting to other machines.

                            end

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February 1986   G N U ' S   B U L L E T I N   Volume 1 No.1

          Status of GNU Emacs on Various Machines and Systems.
Systems:
  For each type of system, the name of the appropriate s- header file
  is given.

Berkeley 4.1 (s-bsd4.1.h)
  Some conditionals have been provided for 4.1, but I do not know
  for certain that they work as merged in.

Berkeley 4.2 (s-bsd4.2.h) Works on several machines.

Berkeley 4.3 (s-bsd4.3.h) Works, on Vaxes at least.

Ultrix This is another name for Berkeley 4.2.

Uniplus 5.2 (s-unipl5.2.h) Works, on Dual machines at least.

System V rel 0 (s-usg5.0.h) Close to working, on Vaxes.
  A couple of bugs remain.

System V rel 2 (s-usg5.2.h)
  Works, on Stride, TI/LMI Nu and HP 9000s200 machines; but in each case
  the basic system V has been enhanced somewhat. How Emacs works on a
  vanilla system V (if you can find one) is not clear.

  The s- file for the HP machine is s-hpux.h, not s-usg5.2.h.

System V rel 2.2 (s-usg5.2.2.h)
  In 5.2.2 AT&T undid, incompatibly, their previous incompatible
  change to the way the nlist library is called. A different s- file
  is used to enable the other interface.

Machines:
  For each type of machine, the names of the m- and s- header files
  are given.

Apollo running Domain (m-apollo.h; s-bsd4.2.h)

  Currently has a bug: exhausts pure Lisp code space while building
  Emacs. This is probably one trivial error, but someone with an Apollo
  will have to find it.

  Once that bug is fixed, one problem will remain permanently. It is

impossible to dump Emacs; the standard Lisp code must be loaded each
time Emacs is started. This is a limitation of their operating
system. In other respects the system appears to be Berkeley 4.2, and
Emacs is told that it is running under 4.2.

AT&T 7300 running System V
  This port has been done but I have not received the diffs yet.

Celerity
  17.36 has been ported, but I have not seen the port yet.
                                                        cont
                                 5
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February 1986   G N U ' S   B U L L E T I N   Volume 1 No.1

      Status of GNU Emacs on Various Machines and Systems con't

Dual running System V (m-dual.h; s-usg5.2.h)
  As of 17.46, this works except for a few changes
  needed in unexec.c.

Dual running Uniplus (m-dual.h; s-unipl5.2.h) Works.

Gould

  Previous versions ran into trouble with their failure to support
  alloca. Now that there is a portable alloca supplied with Emacs, it
  should not be very hard to do this port.

HP 9000s200 (m-hp200.h; s-hpux.h) Works. This machine is a 68020.

Megatest (m-mega68.h; s-bsd4.2.h)
  Emacs 15 worked; do not have any reports about Emacs 16 or 17
  but any new bugs are probably not difficult.

Nu (TI or LMI) (m-nu.h; s-usg5.2.h)   Nearly working; a few bugs remain.

Pyramid (m-pyramid.h; s-bsd4.2.h) Works.

Sequent Balance (m-sequent.h; s-bsd4.2.h)
  Emacs 17.48 works in their system version 2.0.
  Emacs has not been tried on their system version 1.3.

Stride (m-stride.h; s-usg5.2.h)
  Works, though has not been tested for long. Note, however, that this
  was on a Unix version not yet released by Stride. It is probably also
  possible to run on Stride's 5.1 system but changes in the s- file are
  probably needed.

Sun (m-sun.h, m-sun2.h, m-sun3.h; s-bsd4.2.h)
  There are three m- files for different models of Sun.
  All use Berkeley 4.2. Emacs 17 has run on all of them.

Tahoe (m-tahoe.h; s-bsd4.2.h) Works.

Tektronix(?) 16000 box (m-16000.h; s-bsd4.2.h)
  Emacs 15 worked; no reports since then.

Vax running Berkeley Unix (m-vax.h; s-bsd4.1.h or s-bsd4.2.h or s-bsd4.3.h)
  Works for certain under 4.2 or 4.3; probably a few bugs to fix
  for 4.1. Note tha "ultrix" is essentially 4.2; use s-bsd4.2.h.

Vax running System V rel 0 (m-vax.h; s-usg5.0.h) Still has a couple of bugs.

Vax running VMS Port nearly completed.

                              end

                                6
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February 1986   G N U ' S   B U L L E T I N   Volume 1 No.1

                      A Sample .emacs File

; Robert J. Chassell 6 December '85 simplified 9 January '86 Jerome E. Puzo

; This is a sample .emacs file for GNU Emacs on a Vax running BSD 4.2 Unix.
; Lines that begin with a semi-colon are comments not executed by Emacs.

; TEXT MODE AND AUTO-FILL-MODE

; The next two commands put Emacs into text mode and auto-fill-mode
; when Emacs starts. They are designed for writers who want to start
; writing prose rather than code.
; A programmer might want to enter Lisp mode or C mode.

(setq default-major-mode 'text-mode)
(setq text-mode-hook 'turn-on-auto-fill)

; Sample KEY BINDINGS for a Z-29 terminal

; These functions show how to bind keys to commands.
; The keyboard commands continue to work: for example, you can go
; forward by word either with the right arrow key or with <esc f>.
; If you do not know what meta sequence a function key returns,
; you can use the `describe key' function: type control-h k and then
; the key. Emacs will tell you the meta sequence and any commands
; to which the key is bound.
; note: \e indicates the esc character

(global-set-key "\eT" 'backward-kill-word) ; function key F2
(global-set-key "\eU" 'kill-word)   ; function key F3
(global-set-key "\eD" 'backward-word)   ; function key left-arrow
(global-set-key "\eC" 'forward-word)   ; function key right-arrow
(global-set-key "\eB" 'scroll-up)   ; function key up-arrow
(global-set-key "\eA" 'scroll-down)   ; function key down-arrow
(global-set-key "\eJ" 'forward-sentence)   ; function key erase-key
(global-set-key "\eH" 'backward-sentence) ; function key home-key
(global-set-key "\eP" 'goto-line)   ; function key F6

```
; Example of how to specify control key:
; to redefine control-y to go to the start of the line (like control-a)
; (global-set-key "\C-y" 'beginning-of-line)

; Example of how to cancel a key binding:
; (global-unset-key "\C-y)

; UPDATING EMACS

; After writing a function in your .emacs file, you can send the
; changed information to the rest of emacs by entering meta-control-x .

; This command finds the function around or following the point.
; As soon as you do this, you can begin to use your new function.
```

                              end

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February 1986      G N U ' S   B U L L E T I N       Volume 1 No.1
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What is the Free Software Foundation?

by Richard M. Stallman

The Free Software Foundation is dedicated to eliminating restrictions
on copying, redistribution, understanding and modification of software.

The word "free" in our name does not refer to price; it refers to
freedom. First, the freedom to copy a program and redistribute it to
your neighbors, so that they can use it as well as you. Second, the
freedom to change a program, so that you can control it instead of it
controlling you; for this, the source code must be made available to
you.

The Foundation works to give you these freedoms by developing free
compatible replacements for proprietary software. Specifically, we
are putting together a complete, integrated software system "GNU" that
is upward-compatible with Unix. When it is released, everyone will be
permitted to copy it and distribute it to others; in addition, it will
be distributed with source code, so you will be able to learn about
operating systems by reading it, to port it to your own machine, to
improve it, and to exchange the changes with others.

There are already organizations that distribute free CPM and MSDOS
software. The Free Software Foundation is doing something different.

1. The other organizations exist primarily for distribution; they
distribute whatever happens to be available. We hope to provide a
complete integrated free system that will eliminate the need for any
proprietary software.

2. One consequence is that we are now interested only in software

that fits well into the context of the GNU system. Distributing
free MSDOS or Macintosh software is a useful activity, but it is
not part of our game plan.

3. Another consequence is that we will actively attempt to improve and
extend the software we distribute, as fast as our manpower permits.
For this reason, we will always be seeking donations of money,
computer equipment or time, labor, and source code to improve the GNU
system.

4. In fact, our primary purpose is this software development effort;
distribution is just an adjunct which also brings in some money. We
think that the users will do most of the distribution on their own,
without needing or wanting our help.

                                                        cont

                                    8
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February 1986   G N U ' S   B U L L E T I N   Volume 1 No.1

            What is the Free Software Foundation? con't

                    Why a Unix-Like System?

It is necessary to be compatible with some widely used system to give
our system an immediate base of trained users who could switch to it
easily and an immediate base of application software that can run on
it. (Eventually we will provide free replacements for proprietary
application software as well, but that is some years in the future.)

We chose Unix because it is a fairly clean design which is already
known to be portable, yet whose popularity is still rising. The
disadvantages of Unix seem to be things we can fix without removing
what is good in Unix.

Why not imitate MSDOS or CPM? They are more widely used, true, but
they are also very weak systems, designed for tiny machines. Unix is
much more powerful and interesting. When a system takes years to
implement, it is important to write it for the machines that will
become available in the future; not to let it be limited by the
capabilities of the machines that are in widest use at the moment but
will be obsolete when the new system is finished.

Why not aim for a new, more advanced system, such as a Lisp Machine?
Mainly because that is still more of a research effort; there is a
sizeable chance that the wrong choices will be made and the system
will turn out not very good. In addition, such systems are often tied
to special hardware. Being tied to one manufacturer's machine would
make it hard to remain independent of that manufacturer and get broad
community support.

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9

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February 1986       G N U ' S   B U L L E T I N        Volume 1 No.1
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Gnu Status
by Richard M. Stallman

1. GNU Emacs.

GNU Emacs is in wide use on several kinds of 4.2 systems. Support for
some versions of system V now exists, and VMS support is expected now
in a few weeks. There is now an Info-style reference manual also.

Berkeley is going to include GNU Emacs on the 4.3 distribution, and
DEC has also expressed an interest in distributing it with Unix
systems.

2. gsh, the GNU imitation C shell.

This is being tested at a few sites. Wider distribution is expected
soon.

3. Kernel.

I am planning to use a remote procedure call kernel called TRIX,
developed at MIT, as the GNU kernel. It runs, and supports basic Unix
compatibility, but needs a lot of new features. Its authors have
decided to distribute it free. It was developed on an obscure,
expensive 68000 box designed years ago at MIT.

4. C compiler

Although I have a portable C and Pascal compiler, it has a serious

drawback: it is a very large program, and intrinsically cannot be made
smaller. It is also very hard to bootstrap.

The problem is that most of the compiler is written in Pastel, a
super-hairy extended Pascal, and it is also the sole compiler for that
language. To make it smaller, we must eliminate the hair needed to
compile Pastel; then we will not be able to compile Pastel, so it must
all be rewritten into C.

Len Tower, the sole full-time GNU staff person, is working on this,
with one or two assistants. He can certainly use more, but they must
be in Cambridge or else be able to communicate on the Internet.

5. Documentation system.

I now have a truly compatible pair of programs which can convert a
file of texinfo format documentation into either a printed manual or
an Info file.

Documentation files are needed for many utilities.

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                              10
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February 1986   G N U ' S   B U L L E T I N   Volume 1 No.1

                         Gnu's Status Con't

6. Other utilities.

`diff', `tar' and `find' are being written.  `ls`, with full 4.2 and
system V features, is finished. `make', with full 4.2 features, is
also finished. `lex' is supposedly finished and to be sent soon.

A mostly-machine-independent assembler is mostly finished.

I have started writing a debugger, somewhat along the lines of dbx.
It can now read dbx symbol tables and evaluate C expressions with
respect to a core dump.

7. Free Software Foundation.

This foundation exists for two purposes: to accept gifts to support
GNU development, and to carry out distribution. It was incorporated
at the beginning of October, and we applied for a tax examption in
late December.

Its address is

    Free Software Foundation, Inc.
    1000 Mass Ave

Cambridge, MA 02138

and its phone number is (617) 876-3296.

According to our incorporation papers:

 "The corporation is formed for literary, educational and charitable
purposes with the special purpose of

   i) encouraging, fostering, and promoting the free exchange of computer
   software and information related to computers and other technology.
   ii) distributing and disseminating software and information related
   to computers and other technology; and
   iii) increasing the public's access to computers and high technology
   devices.

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                                11
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February 1986   G N U ' S   B U L L E T I N   Volume 1 No.1

                          Gnu's Status Con't

8. Service directory.

The foundation now maintains a Service Directory; a list of people who
offer service to individual users of GNU Emacs and, eventually, all
parts of the GNU system. Service can be answering questions for new
users, customizing programs, porting to new systems, or anything else.

9. Porting.

It is too early to inquire about porting GNU (except GNU Emacs).
First, we have to finish it.

10. Possible target machines.

GNU will require a cpu that uses 32-bit addresses and integers and
addresses to the 8-bit byte. 1 meg of core should be enough, though 2
meg would probably make a noticeable improvement in performance.
Running much of the system in 1/2 meg may be possible, but certainly
not GNU Emacs. I do not expect that virtual memory will be required,
but it is VERY desirable in any case.

GNU Emacs requires at least a meg of memory in the system, either

physical or virtual.

A hard disk will be essential; at least 20 meg will be needed to hold
the system plus the source code plus the manual plus swapping space.
Plus more space for the user's files, of course. I'd recommend 80meg
for a personal GNU system.

This is not to say that it will be impossible to adapt some or all of
GNU for other kinds of machines; but it may be difficult, and I don't
consider it part of my job to try to reduce that difficulty.

I have nothing to say about any specific models of microcomputer, as I
do not follow hardware products.

end

                                12
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February 1986   G N U ' S   B U L L E T I N   Volume 1 No. 1

                      Some Arguments for Gnu's Goals
                      ==============================

                        by Richard. M. Stallman

Once GNU is written, everyone will be able to obtain good system
software free, just like air.

This means much more than just saving everyone the price of a license.
It means that much wasteful duplication of system programming effort
will be avoided. This effort can go instead into advancing the state
of the art.

Complete system sources will be available to everyone. As a result, a
user who needs changes in the system will always be free to make them
himself, or hire any available programmer or company to make them for
him. Users will no longer be at the mercy of one programmer or
company which owns the sources and is in sole position to make
changes.

Schools will be able to provide a much more educational environment by
encouraging all students to study and improve the system code.
Harvard's computer lab used to have the policy that no program could
be installed on the system if its sources were not on public display,
and upheld it by actually refusing to install certain programs. I was
very much inspired by this.

Finally, the overhead of considering who owns the system software and

what one is or is not entitled to do with it will be lifted.

"So, how could programmers make a living?"

There are plenty of ways that programmers could make a living without
selling the right to use a program. This way is customary now because
it brings programmers and businessmen the most money, not because it
is the only way to make a living. It is easy to find other ways if
you want to find them. Here are a number of examples.

A manufacturer introducing a new computer will pay for the porting of
operating systems onto the new hardware.

The sale of teaching, hand-holding and maintenance services could also
employ programmers.

People with new ideas could distribute programs as freeware, asking
for donations from satisfied users, or selling hand-holding services.
I have met people who are already working this way successfully.

Users with related needs can form users' groups, and pay dues. A
group would contract with programming companies to write programs that
the group's members would like to use.

end

13

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February 1986   G N U ' S   B U L L E T I N   Volume 1 No.1

Wish List

There are various thing which project GNU and the Free Software
Foundation can do with the donation of:

* Money

* A modular, customizable, optimizing, free or public domain C compiler
with source.

* Money. Salary for two more full time programers.

* Equipment to keep them busy on. Or a 68xxx or 32xxx based system
with one meg or more of memory and 80meg of disk storage would
do.

* Money

* Office space of our own.

* Money

* Dedicated people, with C and Unix knowledge, especially those with
a local (Cambridge and surrounds) address. We have utilities for
programmers to program. We have documentation for dedicated people to
write.

* Money

                              end

                               14
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February 1986   G N U ' S   B U L L E T I N   Volume 1 No.1

                    Free Software Foundation Order Form
                            February 6, 1986

All software and publications are distributed with a permission to
copy and redistribute.

Quantity Price Item

_____ $150   GNU Emacs source code, on a 1600bpi industry standard
                   mag tape in tar format. The tape also contains
                   MIT Scheme (a dialect of Lisp), hack (a rogue-like game)
                   and bison (a compatible replacement for yacc).

_____ $15   GNU Emacs manual. This includes a reference card.

Thus, a tape and one manual come to $165.

_____ $60   Box of six GNU Emacs manuals, shipped book rate.

_____ $1   GNU Emacs reference card. Or:

_____ $6   One dozen GNU Emacs reference cards.

Shipping outside North America is normally by surface mail. For air
mail delivery, please add $15 per tape or manual, $1 for an individual
reference card, or 50 cents per card in quantity twelve or more.

Prices are subject to change without notice. Massachusetts residents
please add 5% sales tax to all prices.

_____   Total paid

Orders are filled upon receipt of check or money order. We do not have
the staff to handle the billing of unpaid orders. Please help keep
our lives simple by including your payment with your order.

Make checks payable to Free Software Foundation. Mail orders to:

   Free Software Foundation, Inc.
   1000 Mass Ave
   Cambridge, MA 02138

All software from the Free Software Foundation is provided on an "as
is" basis, with no warranty of any kind.

                              15
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February 1986   G N U ' S   B U L L E T I N   Volume 1 No.1

                            Thank Gnus

The Free Software Foundation would like to send special thank gnus to
the following:

Thanks to Micheal Zelyony. Mike answered the mail and sent out manuals
and publicity for the FSF from September to November of 1985. As the
one who has taken over his job I can appreciate the size of his
contribution.

Thanks to Ed Zimmer. Ed's philanthropy has given the FSF the salary
for one full time programmer.

Thanks to Lisp Machine, Inc. LMI has generously provided office space,
computer resources and a mailing address for FSF.

Thanks to Jerry Pournelle. Jerry mentioned us in his BYTE column.
We have received over one hundred responses so far. Ninety percent of
Jerry's readers take what he says literally. One or two single dollar
bills seem to fall out of each letter I open.

Thanks to all those who have contributed source code.

Thanks to those who sent money and offered help. Thanks also to those
who support us by ordering Emacs manuals and distribution tapes.

The creation of this bulletin is our way of thanking all who have
expressed interest in what we are doing.

                              end

                                                     | |
    Free Software Foundation, Inc. | stamp |
    1000 Mass Ave | |
    Cambridge, MA 02138 | here |
                                                     | |

Associate members power up the Free Software Foundation. Help smash our goal of **700** new members or donate by December 31st!

Donate Join

$172,404
$450,000

What is free software?

Have a question about free software licensing not answered here? See our other licensing resources, and if necessary contact the FSF Compliance Lab at licensing@fsf.org.

The Free Software Definition

The free software definition presents the criteria for whether a particular software program qualifies as free software. From time to time we revise this definition, to clarify it or to resolve questions about subtle issues. See the History section below for a list of changes that affect the definition of free software.

"Free software" means software that respects users' freedom and community. Roughly, it means that **the users have the freedom to run, copy, distribute, study, change and improve the software**. Thus, "free software" is a matter of liberty, not price. To understand the concept, you should think of "free" as in "free speech," not as in "free beer". We sometimes call it "libre software," borrowing the French or Spanish word for "free" as in freedom, to show we do not mean the software is gratis.

We campaign for these freedoms because everyone deserves them. With these freedoms, the users (both individually and collectively) control the program and what it does for them. When users don't control the program, we call it a "nonfree" or "proprietary" program. The nonfree program controls the users, and the developer controls the program; this makes the program an instrument of unjust power.

The four essential freedoms

A program is free software if the program's users have the four essential freedoms:

- The freedom to run the program as you wish, for any purpose (freedom 0).
- The freedom to study how the program works, and change it so it does your computing as you wish (freedom 1). Access to the source code is a precondition for this.
- The freedom to redistribute copies so you can help your neighbor (freedom 2).
- The freedom to distribute copies of your modified versions to others (freedom 3). By doing this you can give the whole community a chance to benefit from your changes. Access to the source code is a precondition for this.

A program is free software if it gives users adequately all of these freedoms. Otherwise, it is nonfree. While we can distinguish various nonfree distribution schemes in terms of how far they fall short of being free, we consider them all equally unethical.

In any given scenario, these freedoms must apply to whatever code we plan to make use of, or lead others to make use of. For instance, consider a program A which automatically launches a program B to handle some cases. If we plan to distribute A as it stands, that implies users will need B, so we need to judge whether both A and B are free. However, if we plan to modify A so that it doesn't use B, only A needs to be free; B is not pertinent to that plan.

"Free software" does not mean "noncommercial". A free program must be available for commercial use, commercial development, and commercial distribution. Commercial development of free software is no longer unusual; such free commercial software is very important. You may have paid money to get copies of free software, or you may have obtained copies at no charge. But regardless of how you got your copies, you always have the freedom to copy and change the software, even to sell copies.

The rest of this page clarifies certain points about what makes specific freedoms adequate or not.

The freedom to run the program as you wish

The freedom to run the program means the freedom for any kind of person or organization to use it on any kind of computer system, for any kind of overall job and purpose, without being required to communicate about it with the developer or any other specific entity. In this freedom, it is the *user's* purpose that matters, not the *developer's* purpose; you as a user are free to run the program for your purposes, and if you distribute it to someone else, she is then free to run it for her purposes, but you are not entitled to impose your purposes on her.

The freedom to run the program as you wish means that you are not forbidden or stopped from

making it run. This has nothing to do with what functionality the program has, whether it is technically capable of functioning in any given environment, or whether it is useful for any particular computing activity.

The freedom to study the source code and make changes

In order for freedoms 1 and 3 (the freedom to make changes and the freedom to publish the changed versions) to be meaningful, you must have access to the source code of the program. Therefore, accessibility of source code is a necessary condition for free software. Obfuscated "source code" is not real source code and does not count as source code.

Freedom 1 includes the freedom to use your changed version in place of the original. If the program is delivered in a product designed to run someone else's modified versions but refuse to run yours — a practice known as "tivoization" or "lockdown", or (in its practitioners' perverse terminology) as "secure boot" — freedom 1 becomes an empty pretense rather than a practical reality. These binaries are not free software even if the source code they are compiled from is free.

One important way to modify a program is by merging in available free subroutines and modules. If the program's license says that you cannot merge in a suitably licensed existing module — for instance, if it requires you to be the copyright holder of any code you add — then the license is too restrictive to qualify as free.

Whether a change constitutes an improvement is a subjective matter. If your right to modify a program is limited, in substance, to changes that someone else considers an improvement, that program is not free.

The freedom to redistribute if you wish: basic requirements

Freedom to distribute (freedoms 2 and 3) means you are free to redistribute copies, either with or without modifications, either gratis or charging a fee for distribution, to anyone anywhere. Being free to do these things means (among other things) that you do not have to ask or pay for permission to do so.

You should also have the freedom to make modifications and use them privately in your own work or play, without even mentioning that they exist. If you do publish your changes, you should not be required to notify anyone in particular, or in any particular way.

Freedom 3 includes the freedom to release your modified versions as free software. A free license may also permit other ways of releasing them; in other words, it does not have to be a copyleft license. However, a license that requires modified versions to be nonfree does not qualify as a free license.

The freedom to redistribute copies must include binary or executable forms of the program, as well as source code, for both modified and unmodified versions. (Distributing programs in runnable form is necessary for conveniently installable free operating systems.) It is OK if there is no way to produce a binary or executable form for a certain program (since some languages don't support that feature), but you must have the freedom to redistribute such forms should you find or develop a way to make them.

Copyleft

Certain kinds of rules about the manner of distributing free software are acceptable, when they don't conflict with the central freedoms. For example, copyleft (very simply stated) is the rule that when redistributing the program, you cannot add restrictions to deny other people the central freedoms. This rule does not conflict with the central freedoms; rather it protects them.

In the GNU project, we use copyleft to protect the four freedoms legally for everyone. We believe there are important reasons why it is better to use copyleft. However, noncopylefted free software is ethical too. See Categories of Free Software for a description of how "free software," "copylefted software" and other categories of software relate to each other.

Rules about packaging and distribution details

Rules about how to package a modified version are acceptable, if they don't substantively limit your freedom to release modified versions, or your freedom to make and use modified versions privately. Thus, it is acceptable for the license to require that you change the name of the modified version, remove a logo, or identify your modifications as yours. As long as these requirements are not so burdensome that they effectively hamper you from releasing your changes, they are acceptable; you're already making other changes to the program, so you won't have trouble making a few more.

Rules that "if you make your version available in this way, you must make it available in that way also" can be acceptable too, on the same condition. An example of such an acceptable rule is one saying that if you have distributed a modified version and a previous developer asks for a

copy of it, you must send one. (Note that such a rule still leaves you the choice of whether to distribute your version at all.) Rules that require release of source code to the users for versions that you put into public use are also acceptable.

A special issue arises when a license requires changing the name by which the program will be invoked from other programs. That effectively hampers you from releasing your changed version so that it can replace the original when invoked by those other programs. This sort of requirement is acceptable only if there's a suitable aliasing facility that allows you to specify the original program's name as an alias for the modified version.

Export regulations

Sometimes government export control regulations and trade sanctions can constrain your freedom to distribute copies of programs internationally. Software developers do not have the power to eliminate or override these restrictions, but what they can and must do is refuse to impose them as conditions of use of the program. In this way, the restrictions will not affect activities and people outside the jurisdictions of these governments. Thus, free software licenses must not require obedience to any nontrivial export regulations as a condition of exercising any of the essential freedoms.

Merely mentioning the existence of export regulations, without making them a condition of the license itself, is acceptable since it does not restrict users. If an export regulation is actually trivial for free software, then requiring it as a condition is not an actual problem; however, it is a potential problem, since a later change in export law could make the requirement nontrivial and thus render the software nonfree.

Legal considerations

In order for these freedoms to be real, they must be permanent and irrevocable as long as you do nothing wrong; if the developer of the software has the power to revoke the license, or retroactively add restrictions to its terms, without your doing anything wrong to give cause, the software is not free.

A free license may not require compliance with the license of a nonfree program. Thus, for instance, if a license requires you to comply with the licenses of "all the programs you use", in the case of a user that runs nonfree programs this would require compliance with the licenses of those nonfree programs; that makes the license nonfree.

It is acceptable for a free license to specify which jurisdiction's law applies, or where litigation must be done, or both.

Contract-based licenses

Most free software licenses are based on copyright, and there are limits on what kinds of requirements can be imposed through copyright. If a copyright-based license respects freedom in the ways described above, it is unlikely to have some other sort of problem that we never anticipated (though this does happen occasionally). However, some free software licenses are based on contracts, and contracts can impose a much larger range of possible restrictions. That means there are many possible ways such a license could be unacceptably restrictive and nonfree.

We can't possibly list all the ways that might happen. If a contract-based license restricts the user in an unusual way that copyright-based licenses cannot, and which isn't mentioned here as legitimate, we will have to think about it, and we will probably conclude it is nonfree.

Use the right words when talking about free software

When talking about free software, it is best to avoid using terms like "give away" or "for free," because those terms imply that the issue is about price, not freedom. Some common terms such as "piracy" embody opinions we hope you won't endorse. See Confusing Words and Phrases that are Worth Avoiding for a discussion of these terms. We also have a list of proper translations of "free software" into various languages.

How we interpret these criteria

Finally, note that criteria such as those stated in this free software definition require careful thought for their interpretation. To decide whether a specific software license qualifies as a free software license, we judge it based on these criteria to determine whether it fits their spirit as well as the precise words. If a license includes unconscionable restrictions, we reject it, even if we did not anticipate the issue in these criteria. Sometimes a license requirement raises an issue that calls for extensive thought, including discussions with a lawyer, before we can decide if the requirement is acceptable. When we reach a conclusion about a new issue, we often update these criteria to make it easier to see why certain licenses do or don't qualify.

Get help with free licenses

If you are interested in whether a specific license qualifies as a free software license, see our list of licenses. If the license you are concerned with is not listed there, you can ask us about it by sending us email at <licensing@gnu.org>.

If you are contemplating writing a new license, please contact the Free Software Foundation first by writing to that address. The proliferation of different free software licenses means increased work for users in understanding the licenses; we may be able to help you find an existing free software license that meets your needs.

If that isn't possible, if you really need a new license, with our help you can ensure that the license really is a free software license and avoid various practical problems.

Beyond Software

Software manuals must be free, for the same reasons that software must be free, and because the manuals are in effect part of the software.

The same arguments also make sense for other kinds of works of practical use — that is to say, works that embody useful knowledge, such as educational works and reference works. Wikipedia is the best-known example.

Any kind of work *can* be free, and the definition of free software has been extended to a definition of free cultural works applicable to any kind of works.

Open Source?

Another group uses the term "open source" to mean something close (but not identical) to "free software". We prefer the term "free software" because, once you have heard that it refers to freedom rather than price, it calls to mind freedom. The word "open" never refers to freedom.

History

From time to time we revise this Free Software Definition. Here is the list of substantive changes, along with links to show exactly what was changed.

- Version 1.153: Clarify that freedom to run the program means nothing stops you from making it run.
- Version 1.141: Clarify which code needs to be free.
- Version 1.135: Say each time that freedom 0 is the freedom to run the program as you

wish.
- Version 1.134: Freedom 0 is not a matter of the program's functionality.
- Version 1.131: A free license may not require compliance with a nonfree license of another program.
- Version 1.129: State explicitly that choice of law and choice of forum specifications are allowed. (This was always our policy.)
- Version 1.122: An export control requirement is a real problem if the requirement is nontrivial; otherwise it is only a potential problem.
- Version 1.118: Clarification: the issue is limits on your right to modify, not on what modifications you have made. And modifications are not limited to "improvements"
- Version 1.111: Clarify 1.77 by saying that only retroactive *restrictions* are unacceptable. The copyright holders can always grant additional *permission* for use of the work by releasing the work in another way in parallel.
- Version 1.105: Reflect, in the brief statement of freedom 1, the point (already stated in version 1.80) that it includes really using your modified version for your computing.
- Version 1.92: Clarify that obfuscated code does not qualify as source code.
- Version 1.90: Clarify that freedom 3 means the right to distribute copies of your own modified or improved version, not a right to participate in someone else's development project.
- Version 1.89: Freedom 3 includes the right to release modified versions as free software.
- Version 1.80: Freedom 1 must be practical, not just theoretical; i.e., no tivoization.
- Version 1.77: Clarify that all retroactive changes to the license are unacceptable, even if it's not described as a complete replacement.
- Version 1.74: Four clarifications of points not explicit enough, or stated in some places but not reflected everywhere:
    - "Improvements" does not mean the license can substantively limit what kinds of modified versions you can release. Freedom 3 includes distributing modified versions, not just changes.
    - The right to merge in existing modules refers to those that are suitably licensed.
    - Explicitly state the conclusion of the point about export controls.
    - Imposing a license change constitutes revoking the old license.
- Version 1.57: Add "Beyond Software" section.
- Version 1.46: Clarify whose purpose is significant in the freedom to run the program for any purpose.
- Version 1.41: Clarify wording about contract-based licenses.
- Version 1.40: Explain that a free license must allow to you use other available free

software to create your modifications.

- Version 1.39: Note that it is acceptable for a license to require you to provide source for versions of the software you put into public use.
- Version 1.31: Note that it is acceptable for a license to require you to identify yourself as the author of modifications. Other minor clarifications throughout the text.
- Version 1.23: Address potential problems related to contract-based licenses.
- Version 1.16: Explain why distribution of binaries is important.
- Version 1.11: Note that a free license may require you to send a copy of versions you distribute to previous developers on request.

There are gaps in the version numbers shown above because there are other changes in this page that do not affect the definition or its interpretations. For instance, the list does not include changes in asides, formatting, spelling, punctuation, or other parts of the page. You can review the complete list of changes to the page through the cvsweb interface.

Exhibit
2

Software Freedom Conservancy

Welcome

The Software Freedom Conservancy is an organization composed of Free and Open Source Software (FOSS) projects. As a fiscal sponsor for FOSS projects, the Conservancy provides member projects with free financial and administrative services, but does not involve itself with technological and artistic decisions.

By joining the Conservancy, member FOSS projects obtain the benefits of a formal legal structure while keeping themselves focused on software development. These benefits include, most notably, protection from personal liability for project developers. Another benefit of joining the Conservancy is that projects can use it to hold assets, which are managed by the Conservancy on behalf of and at the direction of the project. The Conservancy is also seeking tax-exempt status, which would allow the Conservancy's member projects to receive tax deductible donations.

If you think your FOSS project might benefit from joining the Conservancy, please contact us.

Overview

News

Contact SFC

SFC Board

Donations

Keep up on Conservancy news! Enter your email address below.

Go

Member Projects

BusyBox

SurveyOS

uCLibc

Wine

Exhibit 3
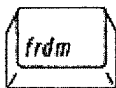
SOFTWARE FREEDOM LAW CENTER

1995 Broadway, 17th Floor
New York, NY 10023
212.580.0800
212.580.0898 fax
www.softwarefreedom.org

Daniel B. Ravicher
Legal Director
212.461.1902 direct
ravicher@softwarefreedom.org

September 15, 2006

Bradley Kuhn
Software Freedom Conservancy
bkuhn@softwarefreedom.org

Re: Engagement

Dear Client Contact:

We at the Software Freedom Law Center ("SFLC") are pleased to agree with the Software Freedom Conservancy ("You") to provide legal services in support of your activities in the production and distribution of software that can be freely copied, modified, and redistributed by all its users ("free software"). This letter constitutes the agreement between us as to how those services will be delivered.

Scope of Representation

SFLC will provide You with legal advice concerning Your free software production and distribution projects. In the event that your free software activities give rise to litigation, we will provide advice and assistance to your independently-retained litigation counsel.

SFLC is an organization based in the United States and employing lawyers qualified to practice in the States of the United States, in the US Federal courts, and before the US Patent and Trademark Office. We do not undertake to provide legal opinions or legal advice on non-US operations, or on non-US aspects of US operations. To the extent feasible, we will use our best efforts to coordinate the provision of legal advice concerning non-US issues and operations with counsel elsewhere willing to provide such advice on pro bono terms. If you retain counsel to provide such advice elsewhere, we will assist those counsel in providing legal advice and services in connection with your free software operations.

You acknowledge that SFLC has undertaken to represent You only to the extent described in this letter and that our representation does not entail any obligation to advise You concerning other matters or Your affairs generally or, after the completion of our representation with respect to the described matter or matters, subsequent legal developments related to, or that might have a bearing on, such matter or matters.

Fees and Charges

SFLC will provide its advice and services to you pro bono publico, without fee. SFLC will in addition absorb ordinary incidental expenses in connection with the provision of legal advice and services, including but not limited to telecommunications, document copying, and mailing and delivery expenses for communications with You. SFLC will cover costs of travel, lodging, and other similar expenses in connection with Your representation, except as otherwise agreed between You and SFLC.

Other expenses incurred in printing and filing documents with courts and government agencies, and other services acquired from outside vendors, may be billed to You at their cost to SFLC, without mark-up, and passing on any discounts we may receive, at our discretion. We will bill you for non-covered cost disbursements quarterly, unless otherwise agreed; invoices are payable immediately upon receipt.

SFLC is a donor-supported organization. We reserve the right to modify these terms – except as to the charging of fees for our legal services – as required in order to maintain financial solvency, on fair notice to You of such changes in terms.

Waiver of Conflicts

As You know, SFLC is an organization formed to represent a wide range of non-profit organizations and individuals involved in free software activities. Should any matter that we have undertaken in the past, are currently undertaking, or choose to undertake in the future create a conflict of interest with You, You hereby consent to and, to the extent permissible by law, waive each such conflict.

Termination

You have the right to terminate our engagement at any time. SFLC also has the right to terminate the engagement at any time, subject to giving You a reasonable opportunity to arrange alternative representation. In either case, You will remain obligated to pay for non-covered costs paid or incurred on Your behalf through the date of termination of the engagement.

Applicable Law and Arbitration

The laws of the State of New York will govern the interpretation of this letter, including all rules or codes of ethics that apply to the provision of legal services. This letter reflects SFLC's understanding of the terms and conditions of our representation of You. Please sign and return to us, after completing appropriate internal approval processes, a copy of this
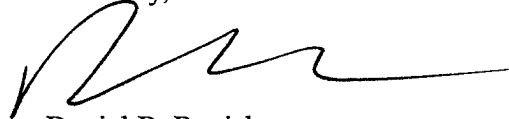
letter confirming that our understanding is correct. In the event that a dispute arises between us, you may have the right to arbitration of the dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts of the State of New York, a copy of which will be provided to you upon request.
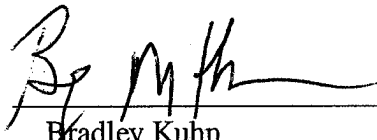
We look forward to working with you.

Sincerely,

Daniel B. Ravicher

ACCEPTED:

By: _____   Date: 15 Sept. 2006
Bradley Kuhn
Software Freedom Conservancy

Exhibit

4

software freedom
conservancy

The next $40,563 of support we receive will be matched thanks to Private Internet Access and an anonymous donor! Support Conservancy today!

$34,436 matched!

Software Freedom Conservancy Appoints Full-Time Executive Director

October 4, 2010

Today, the Software Freedom Conservancy, Inc., a 501(c)(3) non-profit organization, which provides Free, Libre, and Open Source Software (FLOSS) projects with fiscal sponsorship, asset stewardship, license enforcement and license compliance services, announced the appointment of Bradley M. Kuhn as its full-time Executive Director.

"Conservancy provides fundamental infrastructure to its Free Software member projects", Kuhn said in a statement today. Kuhn added: "Our goal is to handle all the issues of non-profit management and oversight for Free Software developers, so they can focus on the important tasks of writing and documenting software. I am grateful for the opportunity to focus my work in the software freedom community on this urgent and necessary endeavor."

Kuhn brings to Conservancy two decades of experience in software freedom volunteerism and ten years of non-profit management and organizational experience. From 2001 to 2005, Kuhn was Executive Director of the Free Software Foundation in Boston, MA. More recently, from 2005 to 2010, Kuhn worked as Policy Analyst and Technology Director of the Software Freedom Law Center (SFLC).

Conservancy continues to receive pro-bono legal services from SFLC. Eben Moglen, Director-Counsel of the SFLC, said: "SFLC is glad to provide its pro-bono legal services to organizations like Conservancy, which provides essential non-profit management services to Free Software projects". Moglen added: "SFLC can think of no one better than Bradley to provide these important services to Conservancy's member projects."

Since its founding in 2006, Conservancy has accepted applications from FLOSS projects that seek the benefits of non-profit organizational existence without engaging in the arduous effort of incorporating and achieving 501(c)(3) status on their own. Conservancy is currently home to twenty-two member projects, and more are expected to join shortly.

Connect with Conservancy on Mastodon, Twitter, pump.io, Google+, Facebook, and YouTube.

Main Page | Contact | Sponsors | Privacy Policy | RSS Feed

Exhibit

5

Gentlemen,

I regret that, from today, SFLC can no longer provide representation
to the Conservancy pro bono publico. Should you wish to retain us in
future, please let me know.

Regards,
Eben

Exhibit
6

Subject: Interested in presenting at LCS legal track?

So, I've now been officially roped in as the seemingly permanent (well,
does two years running count as permanent?) coordinator of the Linux
Collaboration Summit Legal & Policy track.

We didn't get many submission during the CFP, and so I'm recruiting
folks who would give a good talk to add into the track.

Would you like to present on something?

If so, I need a title and abstract ASAP, since the CFP is technically
closed now.

Pretty much any topic you might be into is fine, but note that I'm
already talking on GPL enforcement, Fontana is giving a version of his
FOSDEM talk, Karen is already talking on trademark policies, Keith
Bergelt is already talking about usual OIN stuff, and someone from Intel
will probably speak about how Yocto can integrate well with license
compliance plans.

So, if you can give us something that would fit in well in that context,
we'd love to have you. With both me and the Yocto talk, we're a bit
compliance heavy so something *not* on that would be good.

I may be able to coax travel funding out of Amanda at LF for you. She
already agreed for Karen and me, so I think it'd probably be
disingenuous for her to say no to another NPO person who will present.
OTOH, I haven't asked, so I can't assure it yet. Let me know if you
need travel funding for sure to be able to come, and I think it will be
doable.
--
Bradley M. Kuhn, Executive Director, Software Freedom Conservancy

Hey Bradley,

Yes, I'm definitely interested in presenting. Here's my proposal (which I'd love
to talk to you about sometime before LCS, because I know you've thought a lot
about these issues):

Title: The evolving form of free software organizations

Abstract: As largely self-organizing groups, free software projects have always

faced unique challenges when they decide to formally incorporate. The choice
whether to form a nonprofit or a nonprofit carries not only legal but community

consequences. Recently, these choices have only become more complex. The IRS is

closely scrutinizing the applications of new free software nonprofits applying
for tax exemption, and may apply more exclusive criteria to new applications
than it has in the past. Recognizing a need, some established nonprofits have
begun sponsoring the activity of smaller, unincorporated projects. And several
U.S. states have adopted laws authorizing new "hybrid" corporate forms,
"benefit
corporations" organized for profit but dedicated to the public benefit. This
presentation will discuss the changing corporate landscape of free software and

discuss how projects should approach these issues when they consider
incorporation.

Thanks for inviting my proposal. Feel free to s/free software/open source/ if
you think it's necessary or helpful, and let me know if there's anything else
you need. I would need travel funding to attend, so please do let me know if
there is any available.

Thanks,
Aaron

On 02/25/2012 10:49 AM, Bradley M. Kuhn wrote:
> So, I've now been officially roped in as the seemingly permanent (well,
> does two years running count as permanent?) coordinator of the Linux
> Collaboration Summit Legal& Policy track.
>
> We didn't get many submission during the CFP, and so I'm recruiting
> folks who would give a good talk to add into the track.
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> disingenuous for her to say no to another NPO person who will present.
> OTOH, I haven't asked, so I can't assure it yet. Let me know if you
> need travel funding for sure to be able to come, and I think it will be
> doable.

Exhibit

7

**Subject: Pls submit to Linux Foundation Collaboration Summit Legal &
Licensing; deadline tomorrow!**

Dear Aaron,

Richard Fontana and I have the pleasure of being co-track-chairs for the
Linux Foundation Collaboration Summit Legal and Licensing track for
2013. I've done this for the last two years and the track has been
insightful and interesting.

But, that's always thanks to speakers like you who submit excellent talk
proposals. While we can't promise that any specific proposal will be
selected, I am writing to let you know that we'd definitely like to see
your proposal in the mix as we fill the track.

Proposals are due tomorrow, 7 February 2013 at 11:55PM US/Pacific.
Details are here:
  http://events.linuxfoundation.org/events/collaboration-summit/cfp

I look forward to reviewing your proposal!
--
Bradley M. Kuhn, Executive Director, Software Freedom Conservancy

**Subject: Re: Pls submit to Linux Foundation Collaboration Summit Legal
              & Licensing; deadline tomorrow!**

Incoming. Given that LF's servers were apocalypticly pwned not too long ago, I'm
really thrilled to see that my password is being stored in plaintext.

On 02/06/2013 01:19 PM, Bradley M. Kuhn wrote:
> Dear Aaron,
>
> Richard Fontana and I have the pleasure of being co-track-chairs for the
> Linux Foundation Collaboration Summit Legal and Licensing track for
> 2013. I've done this for the last two years and the track has been
> insightful and interesting.
>
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> selected, I am writing to let you know that we'd definitely like to see
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> Proposals are due tomorrow, 7 February 2013 at 11:55PM US/Pacific.
> Details are here:
>   http://events.linuxfoundation.org/events/collaboration-summit/cfp
>
> I look forward to reviewing your proposal!

Exhibit 8

Dear Bradley,

For the past ten years we at the Software Freedom Law Center have
worked to support and advance the interests of software freedom around
the world. As we begin our second decade we would like to invite you
to join us at a free conference exploring legal issues surrounding
FOSS, present and future, held at Columbia Law School on Friday,
October 31, 2014.

Martin Fink, CTO of Hewlett-Packard, will offer a keynote address on
"Free Software and the Machine." Professor Eben Moglen, SFLC's founder
and Executive Director, will speak on "Software Freedom in the Age of
'Cloud to Mobile': The Next Ten Years." SFLC Legal Director Mishi
Choudhary and her team will discuss current issues in patent law,
copyleft compliance, and the ongoing challenge to tax-exempt
non-profit organization for FOSS communities. We will consider
technical as well as legal changes---including memristor-based
computing, disposable computers, and the economics of cloud
architectures---that will have profound effects on FOSS and its legal
arrangements in the decade to come.

The conference will take place at Columbia Law School's Jerome
Greene Hall, 435 West 116th Street, NYC, on October 31, 2014 from
9am to 5pm. No registration is required, but an RSVP is appreciated;
simply reply to this email. NYS Bar members who attend will be
eligible for free CLE credit via on-site registration.

We hope you will join us.

Sincerely,

Ian Sullivan
--
Project Manager
Software Freedom Law Center
1995 Broadway 17FL
New York, NY 10023
(tel) 212-461-1905
(fax) 212-580-0898

Subject: **Halloween conference**

Hi Bradley,

How are you?

I wanted to make sure you got an invitation to the anniversary
conference we are throwing on the 31st. You may have seen the
announcement go up on the site:
https://www.softwarefreedom.org/news/2014/sep/15/sflc-10th-anniversary-conferen
ce/
but either way I wanted to make sure you heard about it and know you are
welcome.

Sincerely,

Ian
--
Project Manager
Software Freedom Law Center
1995 Broadway 17FL
New York, NY 10023
(tel) 212-461-1905
(fax) 212-580-0898

Exhibit
9

O'REILLY®   AUSTIN, TX · LONDON, UK

OSCON

EVERYTHING OPEN SOURCE
MAY 16-17, 2016: TRAINING & TUTORIALS
MAY 18-19, 2016: CONFERENCE
AUSTIN, TX

SCHEDULE   SPEAKERS   EVENTS   EXPO   VENUE/HOTELS   ABOUT

ACCOUNT

Aligning patents and open source

🗑 Add to Your Schedule

Jim Jagielski (ASF), Bradley Kuhn (Software Freedom Conservancy), Heather Meeker (O'Melveny & Myers'), Rabin Bhattacharya (Capital One), Keith Bergelt (Open Invention Network), Mishi Choudhary (Software Freedom Law Center), Eben Moglen (Columbia Law School)
5:10pm-5:50pm Wednesday, 05/18/2016
Business of OSS
Location: Meeting Room 9 A/B
Level: Non-technical
Average rating: ★★★★★ (4.83, 6 ratings)

Prerequisite knowledge

Attendees should have some knowledge of open source licensing and a general understanding of patents.

Description

Jim Jagielski, Bradley Kuhn, Heather Meeker, Rabin Bhattacharya, Keith Bergelt, Mishi Choudhary, and Eben Moglen hold an open and engaging discussion on patents and open source to uncover the complexities associated with each. The panel discusses the effect of open source software on patents, open sourcing software that already has a patent on it, what happens to other company patents if open sourced patented software is developed, and more. After the discussion, there will be time for a Q&A. Come ready with your questions about patents and open source.

Jim Jagielski

ASF

Jim Jagielski is a well-known and widely acknowledged expert
and visionary in open source, an accomplished coder, and a frequent,
engaging presenter on all things open, web, and cloud related. As a
developer, Jim has made substantial code contributions to just about
every core technology behind the internet and web. In 2012, he was
awarded the O'Reilly Open Source Award and in 2015 received the
Innovation Luminary Award from the EU. He is best known as one of the
developers and cofounders of the Apache Software Foundation, where he
has served as both chairman and president and where he's been on the
board of directors since day one. Jim serves as president of the Outercurve
Foundation, was a director of the Open Source Initiative (OSI), and works at
Capital One as a senior director in the Tech Fellows program. He credits his
wife Eileen in keeping him sane.

► Website

Bradley Kuhn

Software Freedom Conservancy

Bradley M. Kuhn is the president and distinguished technologist
at Software Freedom Conservancy, on the board of directors of the Free
Software Foundation, and editor-in-chief of Copyleft.org. Bradley began
his work in the software freedom movement as a volunteer in 1992, when
he became an early adopter of the GNU/Linux operating system and began
contributing to various free software projects. He worked during the 1990s
as a system administrator and software developer for various companies
and taught AP Computer Science at Walnut Hills High School in Cincinnati.
His nonprofit career began in 2000, when he was hired by the FSF. As FSF's
executive director from 2001 to 2005, Bradley led FSF's GPL enforcement,
launched its Associate Member program, and invented the Affero GPL.

Bradley was appointed president of Software Freedom Conservancy in April
2006, was Conservancy's primary volunteer from 2006 to 2010, and has
been a full-time staffer since early 2011. Bradley holds a summa cum laude
BS in computer science from Loyola University in Maryland and an MS in
computer science from the University of Cincinnati, where his master's
thesis discussed methods for dynamic interoperability of free software
programming languages. An excerpt from his thesis won the Damien

programming languages. An excerpt from his thesis won the Damien
Conway Award for Best Technical Paper in 2000. Bradley also received an
O'Reilly Open Source Award in 2012 in recognition for his lifelong policy
work on copyleft licensing. He has a blog, is on pump.io, and cohosts the
audcast, *Free as in Freedom*.

▶ Website

Heather Meeker
O'Melveny & Myers'

Heather Meeker is a partner in O'Melveny & Myers's Silicon Valley
office, where she advises clients on technology transactions and
intellectual property matters, including mergers and acquisitions.
Heather's latest book, *Open Source for Business* (2015), is a handbook for
lawyers, engineers, and businesspersons on open source licensing in
business.

Rabin Bhattacharya
Capital One

Rabin Bhattacharya is a director and assistant general counsel at
Capital One, where he has worked for the past four years. Rabin manages
all of Capital One's patent prosecution and licensing activities, serves as
Capital One's intellectual property subject-matter expert for corporate
transactions, and provides general legal advice on the adoption of new
technologies for financial products. Prior to becoming an attorney, He
served as a chief scientist at Philips in the Netherlands, where he both
invented and oversaw the research of new solid state lighting systems.
Rabin received his JD from Georgetown University, his PhD and MA in
electrical engineering from Princeton University, and his BS in engineering
from Harvey Mudd College.

Keith Bergelt
Open Invention Network

Keith Bergelt is the CEO of Open Invention Network (OIN), the
largest patent nonaggression community in history, organized to support
freedom of action in Linux as a key element of open source software. OIN
has more than 1,900 community members and owns more than 1,100
global patents and applications. The OIN patent license and member cross-
licenses are available royalty free to any party that joins the OIN

global patents and applications. The OIN patent license and member cross-licenses are available royalty free to any party that joins the OIN community. Prior to joining OIN, Keith served as CEO of two hedge funds formed to unlock the considerable asset value of intellectual property in middle market companies. Previously, he served as a senior advisor to the technology investment division at Texas Pacific Group. Keith also headed business development, IP, and licensing for Cambridge Display Technology and established and served as general manager of the Strategic Intellectual Asset Management business unit and director of Technology Strategy at Motorola.

► Website

Mishi Choudhary
Software Freedom Law Center

Mishi Choudhary is the legal director at the Software Freedom Law Center (SFLC), where she is the primary legal representative of many of the world's most significant free software developers and nonprofit distributors, including Debian, the Apache Software Foundation, and OpenSSL, and consults with and advises established businesses and startups using free software in their products and service offerings in the US, Europe, India, China, and Korea. Mishi is also an attorney in good standing admitted to practice in New York State. She is the founder of SFLC.in, which under her direction has become the premier nonprofit organization representing the rights of internet users and free software developers in India. Since then, she has divided her time between New York and New Delhi, where she previously she practiced as a High Court and Supreme Court litigator. As of 2015, Mishi is the only lawyer in the world to simultaneously appear on briefs in the US and Indian Supreme Courts in the same term.

Mishi started working with SFLC following the completion of a fellowship during which she earned her LLM from Columbia Law School and was a Stone Scholar. In addition to an LLM, she has an LLB degree and a bachelor's degree in political science from the University of Delhi. Mishi is a member of the Bar Council of Delhi, licensed to appear before the Supreme Court of India, all the State High Courts in India, in the State of New York, and before the Southern District of New York. In 2015, she was named one of the Asia Society's 21 young leaders building Asia's future. In 2016 she was selected as an Aspen Fellow as part of the Aspen Global Leadership Network.

was selected as an Aspen Fellow as part of the Aspen Global Leadership Network.

► Website

Eben Moglen
Columbia Law School

Eben Moglen is a professor of law at Columbia Law School and the founder of the Software Freedom Law Center. Eben began building software as a professional programmer at age 13. He worked as a designer of advanced computer programming languages at IBM from 1979 to 1985. In 1991, he represented Philip Zimmerman, the developer of PGP ("Pretty Good Privacy"), who was threatened with prosecution by the US government for making strong encryption free software that everyone could use. In 1993, Eben joined forces with Richard M. Stallman to provide world-class legal representation and expertise to the free software movement. With Stallman, he conceived, wrote, and created a public process for discussion and adoption of GPLv3, the current version of the world's most widely used free software license.

In addition to his work with free software developers, Eben has advised major IT companies and national governments around the world. In 2010, he testified before the European Commission on the FOSS consequences of Oracle Corporation's acquisition of Sun Microsystems and before the US Congress on Internet privacy and consumer protection. He has appeared numerous times on software- and privacy-related issues as amicus curiae before the US Supreme Court. Eben earned his PhD in history and his law degree at Yale University. After law school, he clerked for Judge Edward Weinfeld of the US District Court in New York City and for Justice Thurgood Marshall of the US Supreme Court. He has taught at Columbia Law School since 1987 and has held visiting appointments at Harvard University, Tel Aviv University, and the University of Virginia. In 2003, he was given the Electronic Frontier Foundation's Pioneer Award for efforts on behalf of freedom in the electronic society. Eben is admitted to practice in the State of New York and before the United States Supreme Court.

Comments on this page are now closed.

Comments

Comments on this page are now closed.

Comments

Stephen Lashley
01/26/2016 1:21am CST

Can you recommend a good book, since I can't make this conference!

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Exhibit 10

State of New York   }
Department of State } ss:

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on

April 07, 2006

Special Deputy Secretary of State

DOS-1266 (Rev. 11/05)

CERTIFICATE OF INCORPORATION
OF
SOFTWARE FREEDOM CONSERVANCY, INC.
UNDER SECTION 402 OF THE
NOT-FOR-PROFIT CORPORATION LAW

THE UNDERSIGNED, for the purpose of forming a corporation under Section 402 of the Not-For-Profit Corporation Law, does hereby make, subscribe and file this Certificate for that purpose and certifies as follows:

FIRST: The name of the Corporation is Software Freedom Conservancy, Inc. (the "Corporation").

SECOND: The Corporation is a corporation as defined in Section 102(a)(5) of the Not-For-Profit Corporation Law, pursuant to which the Corporation's purpose shall not be for pecuniary profit or financial gain.

THIRD: Pursuant to Section 201(b) of the Not-For-Profit Corporation Law, the Corporation shall be a Type B Corporation.

FOURTH: The purposes for which the Corporation is formed are:
(a) To endeavor to monitor and improve the quality of currently existing publicly available software.
(b) To foster, promote and increase access to software systems available to the general public and promote the general right to use, change or distribute Free and Open Source Software.
(c) To solicit, collect and otherwise raise money and to expend such funds in furtherance of the goals and activities of the Corporation.
(d) To promote the use, development, and improvement of Free and Open Source Software.

FIFTH: In furtherance of the foregoing purposes, the Corporation shall have all the general powers enumerated in Section 202 of the Not-For-Profit Corporation Law and such other powers now or hereafter permitted by law for a corporation organized for the foregoing purposes, including the power to solicit grants and contributions for any corporate purpose.

SIXTH: Notwithstanding any other provision of this certificate, the Corporation is organized exclusively for charitable, scientific and literary purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1954, as it may be amended (the "Code"). The Corporation shall not carry on any activities not permitted to be carried on
(a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the

1

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Code, or

(b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.

SEVENTH: The Corporation will not practice the profession of law.

EIGHTH: No part of the income of the Corporation shall inure to the benefit of any member, trustee, director, or officer of the Corporation or any private individual (except that a reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes), and no member, trustee, officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the Corporate assets upon dissolution of the Corporation.

NINTH: No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, or participating in, or intervening (including the publication or distribution of statements), in any political campaign on behalf of any candidate for public office, except as permitted by Section 501(h) of the Code.

TENTH: In the event of dissolution pursuant to a plan adopted by the Directors, all of the remaining assets and property of the Corporation shall after necessary expenses thereof be distributed to such organizations as shall qualify under Section 501(c)(3) of the Code, subject to an order of a Justice of the Supreme Court of the State of New York.

ELEVENTH: Nothing herein shall authorize the Corporation to engage in any of the activities mentioned in Section 404(a) through (v) of the Code.

TWELFTH: In any year in which the Corporation shall be classified as a private foundation as described in Section 509(a) of the Code, the following shall apply: the Corporation shall distribute its income for each taxable year at such time and in such manner as not to subject it to a tax under Section 4942 of the Code, and the Corporation shall not

(a) engage in any act of self-dealing as defined in Section 4941(d) of the Code,

(b) retain any excess business holdings as defined in Section 4943(c) of the Code,

(c) make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code, or

(d) make any taxable expenditures as defined in Section 4945(d) of the Code.

THIRTEENTH: The Corporation shall solicit funds from the public consistent with the purposes of the Corporation.

FOURTEENTH: The office of the Corporation is in the County of New York and State of New York.

FIFTEENTH: The initial Directors of the Corporation, all of whom are at least nineteen (19) years of age or older, and their addresses are as follows:

2

2

Eben Moglen   1995 Broadway, 17th Floor
New York, NY 10023

Daniel B. Ravicher   1995 Broadway, 17th Floor
New York, NY 10023

Karen M. Sandler   1995 Broadway, 17th Floor
New York, NY 10023

SIXTEENTH: The Secretary of State, pursuant to Section 402(a)(6) is hereby designated as agent of the Corporation upon whom process against it may be served. The Secretary of State shall mail copies of any process served upon her or him to:

Eben Moglen
1995 Broadway, 17th Floor
New York, NY 10023

IN WITNESS WHEREOF, the undersigned incorporator, over the age of nineteen (19) years of age, has executed, subscribed and acknowledged this Certificate this 19th day of September, 2005.

Karen M. Sandler
Software Freedom Law Center
1995 Broadway, 17th Floor
New York, NY 10023

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F 060320000282

CERTIFICATE OF INCORPORATION
OF
SOFTWARE FREEDOM CONSERVANCY, INC.
UNDER SECTION 402 OF THE
NOT-FOR-PROFIT CORPORATION LAW

2 cc

DS

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED MAR 2 0 2006
TAX $
BY:

ny

Filed by:
Karen Sandler
Software Freedom Law Center
1995 Broadway, 17th Floor
New York, NY 10023
212-461-1908

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Exhibit 11

software freedom
conservancy

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The next $41,823 of support we receive will be matched thanks to Private Internet Access and an anonymous donor! Support Conservancy today!

| $33,176 matched! | $41,824 to go! |

Authors

Tags

Conservancy launches a new brand identity

by Tony Sebro on February 28, 2013

Conservancy is pleased to announce our new logo and wordmark as part of the evolution of our organization's brand.

software freedom
conservancy

The Binary Tree logo and updated wordmark reflect a cleaner and more modern representation of Conservancy's commitment to promoting, supporting, and defending Free, Libre, and Open Source Software (FLOSS) projects.

The Binary Tree logo, designed by April Ricafort-Custodio using Inkscape, incorporates a binary tree diagram - representing both a fundamental principle of computer science and our various member projects - into a streamlined version of Conservancy's shade tree silhouette. The wordmark was created using Open Sans Condensed, a sans-serif typeface designed by Steve Matteson and licensed under the Apache License, Version 2.0.

A ZIP archive of the logo sheet in PDF, SVG, ODG, and PNG formats can be downloaded here. The copyrights associated with Conservancy's logo and wordmark are licensed under CC-By-SA-3.0 USA. The marks "Software Freedom Conservancy," "Conservancy," and the Binary Tree logo and wordmark are trademarks of Software Freedom Conservancy.

[permalink]

Tags: conservancy
Please email any comments on this entry to info@sfconservancy.org.

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Exhibit 12

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The next $41,823 of support we receive will be matched thanks to Private Internet Access and an anonymous donor! Support Conservancy today!

| $33,176 matched! | $41,824 to go! |

Conservancy Launches Fundraising Campaign for Non-Profit Accounting Software

Conservancy Seeks to Help All Non-Profit Organizations Worldwide with Free Software

May 1, 2013

Software Freedom Conservancy, a 501(c)(3) charity based in New York, announced today a fundraising campaign for an Open Source and Free Software non-profit accounting system. The campaign seeks to raise US$75,000 to fund a full-time developer for one year to first reevaluate existing Free Software solutions for their viability as a non-profit accounting system, and then improve and augment the best available system to create a new solution that will help non-profits around the world manage their finances better.

To keep their books and produce annual government filings, most non-profit organizations (NPOs) rely on proprietary software, paying exorbitant licensing fees. This is fundamentally at cross purposes with their underlying missions of charity, equality, democracy, and sharing. Conservancy, as a non-profit charity dedicated to the advancement and improvement of Open Source and Free Software, seeks to address this problem by first surveying the existing Free Software solutions available for for-profit accounting needs, and then launching a coordinated Free Software development effort to create a system for all NPOs to use. This project has the potential to save the non-profit sector millions in licensing fees every year. Even NPOs that continue to use proprietary accounting software will benefit, since the existence of quality Open Source and Free Software for a particular task curtails predatory behavior by proprietary software companies, and creates a new standard of comparison. But, more powerfully, this project's realization will increase the agility and collaborative potential for the non-profit sector — a boon to funders, boards, and employees — bringing the Free Software and general NPO communities into closer collaboration and understanding.

Conservancy's initiative has received endorsements from eight other non-profit organizations, including Open Source and/or Free Software NPOs, Free Culture organizations, and a premier arts/cultural fiscal sponsoring organization; the full list of organizations endorsing the effort is included in the full description of the project. In addition, many key figures in non-profit accounting and organizational representatives have made statements of support for this campaign. Conservancy's effort to develop a non-profit accounting software system as Open Source and Free Software is clearly filling an important need, and Conservancy asks donors to give generously to support it, and encourages developers and potential users to join the mailing list for discussion of this project!

About Software Freedom Conservancy

Software Freedom Conservancy is a not-for-profit organization that helps promote, improve, develop and defend Free, Libre and Open Source software projects. Conservancy is home to thirty software projects, each supported by a dedicated community of volunteers, developers and users. Conservancy's projects include some of the most widely used software systems in the world across many application areas, including educational software deployed in schools around the globe, embedded software systems deployed in most consumer electronic devices, distributed version control developer tools, integrated library services systems, and widely used graphics and art programs. A full list of Conservancy's projects can be found on Conservancy's website. Conservancy provides these projects with the necessary infrastructure and not-for-profit support services to enable each project's communities to focus on what they do best: creating innovative software and advancing computing for the public's benefit.

Connect with Conservancy on Mastodon, Twitter, pump.io, Google+, Facebook, and YouTube.

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Exhibit 13

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 4212971
Mark: SOFTWARE FREEDOM CONSERVANCY
Registration date: September 25, 2012

Software Freedom Law Center
Petitioner,
v.
Software Freedom Conservancy
Registrant.

Cancellation No. 92066968

DECLARATION OF KAREN M. SANDLER
IN SUPPORT OF RESPONDENT'S MOTION FOR SUMMARY JUDGMENT
ON ITS AFFIRMATIVE DEFENSES

I, Karen M. Sandler, declare as follows:

1. I am over the age of 18 and if called upon to do so could testify competently about the facts set forth in this declaration. The facts stated in this declaration are made on my personal knowledge.

2. I am currently the Executive Director of the Software Freedom Conservancy ("Conservancy"), the Respondent in this matter.

3. In 2005 I was hired as Counsel at the Software Freedom Law Center ("SFLC") and in January 2010 I was promoted to General Counsel. I left the SFLC on friendly terms to become Executive Director of the GNOME Foundation beginning on June 21, 2011, a non-profit foundation for a free software computing platform. Attached as Exhibit 1 is a true and correct copy of a press release from SFLC's website at https://www.softwarefreedom.org/news/2011/jun/21/Karen-

1

[Sandler-Named-New-Executive-Director-GNOME/](#), where SFLC's Executive Director Eben Moglen described me as "essential to the success of SFLC over the last six years" and a "conscientious practitioner." In March 2014 I left the GNOME Foundation to become Executive Director of Conservancy.

4. My responsibilities at SFLC were, along with other lawyers at SFLC, to advise the SFLC's clients on matters regarding nonprofit formation and maintenance, copyrights, and trademarks. As General Counsel I also oversaw the organization's governance, policies and procedures.

5. The name "Software Freedom Conservancy" was selected at a meeting of SFLC's staff and approved by Moglen. Dan Ravicher was the Legal Director of SFLC at the time, and I recall that the meeting was held in Dan's office as a brainstorming session. I remember that the various suggestions for names were written on a big piece of paper in front of the room and that the paper hung on the back of Dan's door for a very long time, probably years. I don't remember who originally suggested the name "Software Freedom Conservancy," but I remember that James Vasile, another staff attorney, was an advocate for it.

6. I worked on the formation documents of Conservancy as part of my duties at SFLC. I was instructed to do so by Moglen and Ravicher.

7. I was initially the Incorporator of Conservancy and was counsel to the organization in conjunction with my employment at SFLC. I was also on Conservancy's initial board for purposes of the formation of the organization. At the first meeting, I stepped down from the board and was appointed as Corporate Secretary, a position I held until after I became Executive Director of Conservancy. I also continued to provide occasional pro bono legal assistance to Conservancy after I left SFLC and while I was employed at the GNOME Foundation.

8. After I left the employment of SFLC in 2011, I served as its volunteer Treasurer and assisted it with its audit process and tax filings in my free time. I formally confirmed my resignation from this position in February of 2012. I remained listed as pro bono Of Counsel to SFLC until 2014, when I asked to step down due to time constraints.

9. Eben Moglen emailed me to congratulate me on my new role at Conservancy as Executive Director on April 1, 2014. Mishi Choudhary emailed her congratulations on April 3, 2014. Attached at Exhibit 2 are true and correct copies of the emails. Neither mentioned to me that there was any issue with the name of the organization I was joining.

10. I have had a number of friendly interactions with SFLC in the following years, helping SFLC on occasion as pro bono counsel and generally volunteering in small ways to help the organization. For example, in April of 2014, I introduced Mishi Choudhary, Legal Director of SFLC to Karsten Gerloff, then President of the Free Software Foundation Europe. Attached at Exhibit 3 is a true and correct copy of the email thread. SFLC also provided some pro bono legal assistance to the GNOME project while I was Executive Director.

11. I participated in a number of conferences over the years that SFLC employees also attended and spoke with them on many of those occasions. I also attended SFLC's own conference in 2014, where I was invited by SFLC to represent Conservancy on a panel entitled "Organizing FOSS entities." A true and correct copy of the agenda from the SFLC website is attached as Exhibit 4. Moglen introduced my panel, which was moderated by Choudhary. J.D. Bean, an SFLC lawyer was also on the panel. During the session, I gave a detailed overview of Conservancy and its operations. No one ever said anything to me about any perceived problem with the Conservancy trademark or name.

12. However, after I joined Conservancy Moglen started accusing me and Bradley Kuhn, the President of Conservancy, of various wrongdoings that seemed overblown to me. For example, in a lengthy, multi-year string of emails, Moglen claimed that Bradley and I had not republished portions of copyrighted content he and Choudhary made available under a Creative Commons license the right way. He wanted to meet with me to discuss it but I deferred, believing that there was nothing that would be accomplished with an in-person meeting. A true and correct copy of the last email I received on the topic, on May 18, 2016, is attached as Exhibit 5. In this email Moglen said "You and Bradley, not the Conservancy, are the subjects of complaint...."

13. I met in a very small working group of four people at a conference called LibrePlanet in March of 2016. One of the attendees was Bean. He never said anything to me about the Conservancy trademark or branding.

14. SFLC never raised any issue with Conservancy's trademark with me. I am not aware of any emails, letters or phone calls about the topic. I cannot recall SFLC ever mentioned anything to me about confusion surrounding Conservancy's name at all.

15. As a volunteer and then as Executive Director I have worked to build Conservancy. As the head of the organization, I have been the principal fundraising and press contact.
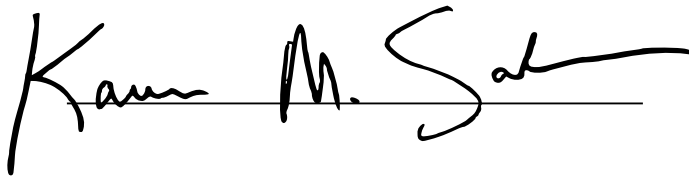
16. I have helped build Conservancy's social media presence on a variety of platforms where we hope advocacy of Conservancy's mission will be effective, including on Twitter, Facebook, Google+, YouTube and Mastadon (a free software microblogging platform). True and correct copies of these social media pages as captured on December 10, 2017 are shown in Exhibit 6. We established our Twitter account, "@conservancy," in 2008 and have since added over 3500 followers. We have posted over 800 tweets. We took the time to make sure our account was approved as "verified," a sought-after distinction that Twitter reserves for accounts they determine to be of public interest. Since July of 2012, Conservancy has added well over 100 news items on its website and over 90 blog posts.

17. When new member projects join Conservancy, part of our formal process is to publish a news item announcing the addition. To promote the Conservancy brand, we take special care to solicit quotes from leaders in those projects to talk about why their project wanted to join Conservancy. Attached as Exhibit 7 are true and correct copies of several of those news items.

18. I have helped spearhead fundraising campaigns, targeted at individuals to donate small amounts to help sustain the organization. The results of the Conservancy's fundraising and other efforts have raised our total annual revenue from about $867,000 in our fiscal year that ended before I joined in 2014 to about $2 million for the year ended in 2016.

19. Conservancy has participated in quite a number of conferences around the world, both by speaking and by staffing booths. Conservancy's attendance at these events is to market Conservancy and acquire new member projects and solicit charitable donations. Personally, since becoming an employee at Conservancy I have delivered keynote addresses at Texas LinuxFest 2014, SeaGL 2014, Campus Party Ecuador 2014, FOSDEM 2015, Linaro Connect 2015, UK Open Source Awards 2015, FISL, Debconf 2016, OpenWest 2016, BroCon 2016, Nextcloud Conference 2016, OSCON EU 2016, SCaLE 15x, Campus Party Brasil 2017, CROSS Symposium, Berlin Buzzwords, !!Con, FrOSCon, Ohio LinuxFest and Freenode #live and participated as a session speaker and panelist on at least 20 others. In each of my speeches, I advocate for Conservancy and its projects and, showing our logo, ask the audience to donate to the organization.

20. I have personally spent hours in the post office to mail branded t-shirts to our supporters, writing handwritten notes to many of them. I have written personal blogposts advocating for Conservancy as well as formal materials on behalf of the organization. I have asked experts in

4

the field to record promotional videos explaining why they choose to donate to Conservancy and worked with a volunteer to professionally present those videos with Conservancy's logo as part of the organization's fundraisers.

21. Since July 2012, Conservancy has added about 20 member projects. We have grown in every metric: financially, increased staff, increased volunteers, and by conducting many more activities.

22. If I had any idea that SFLC would object to Conservancy's name, I would not have undertaken these significant efforts under this name and brand.

23. This suit is extremely harmful to Conservancy. As a lean organization with a staff of only four employees and one part time employee, we work very hard to support our member projects and advocate for software freedom. Having to use our resources to defend our mark detracts from our critical activities in the public's interest. Were we forced to rename, we would also have to invest significant time in rebranding the organization, and find a way to message that through our 46 member projects, their thousands of volunteers and participants, as well as our donors and supporters. Even if Conservancy wins this action, the organization has been harmed as we have already been required to spend many hours responding to the petition.

I declare that all statements made herein of my own knowledge are true and that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Karen M. Sandler

Dated: December 10, 2017

<u>Certificate of Service</u>

I hereby certify that a true and complete copy of the foregoing "DECLARATION OF KAREN M. SANDLER IN SUPPORT OF RESPONDANT'S MOTION FOR SUMMARY JUDGMENT ON ITS AFFIRMATIVE DEFENSES" has been served on Software Freedom Law Center by mailing said copy on <u>December 11, 2017</u>, via electronic mail to:

Daniel Byrnes
Software Freedom Law Center
1995 Broadway, 17th Floor
New York, NY 10023

Email: dbyrnes@softwarefreedom.org

By: _____
       Pamela S. Chestek

Exhibit
1

Software Freedom Law Center

SERVICES	NEWS	PUBLICATIONS	CONTACT	PEOPLE
How we help our clients	What we're doing	What we've said	How to reach us	The SFLC team

News

Karen Sandler Named New Executive Director of the GNOME Foundation

June 21, 2011

The Software Freedom Law Center (SFLC) today announces with its client, the GNOME Foundation(GNOME), that GNOME has appointed SFLC's Karen Sandler as Executive Director. Sandler's dedication to software freedom, her non-profits experience and her involvement in a wide range of free and open source software communities distinguish her as the logical choice for GNOME. "I'm very excited that Karen is joining the GNOME Foundation as Executive Director!", says Stormy Peters, former Executive Director who has recently joined the GNOME Board as a new Director, "Karen brings a wealth of experience in free software projects and nonprofits as well as a passion for free software. That experience will be invaluable as GNOME continues to expand its reach with GNOME 3.0 and GNOME technologies."

Sandler joins the GNOME Foundation from the Software Freedom Law Center where she has been General Counsel, advising a wide range of free and open source software organizations such as the Free Software Foundation, the Apache Software Foundation, the X.Org Foundation, Software in the Public Interest and the Software Freedom Conservancy. With SFLC, she also led an initiative advocating for free software on implantable medical devices. "Karen Sandler has been essential to the success of SFLC over the last six years," said SFLC's founder and executive director, Eben Moglen. "As our general counsel, she has been in the truest sense a lawyer's lawyer. In representation of our clients she has been a superbly creative and conscientious practitioner. As mentor to younger lawyers here, she has set the finest of examples. The GNOME Foundation could not have chosen more wisely." Sandler will continue to work on some legal matters pro bono at SFLC.

Sandler is a frequent speaker on free and open source software issues at corporate based conferences such as the the O'Reilly conferences and the Linux Foundation conferences, as well as community and nonprofit driven events such as the Free Software Foundation's LibrePlanet and SCaLE. Prior to SFLC, she held legal positions at Gibson Dunn & Crutcher, LLP and Clifford Chance, LLP. Sandler earned her legal degree from Columbia Law School and her engineering degree from the Cooper Union.

Other SFLC news...

Privacy Policy   Colophon

Exhibit
2

You're evidently the right person in the right place at the right
time; I've been hearing expressions of relief and renewed confidence
from all over the industry all day long.

Mishi just arrived in New Delhi after a tough trip, but I'm sure you
will hear from her shortly. Everyone in the place, from her on down,
has heard me that our policy is complete support and every form of
useful assistance. If you need or want to talk this week, I'm
available. Otherwise, I would expect that we can find time in
Barcelona for a serious tete-a-tete.

As I'm sure you understand, this is a very happy outcome for me. I
hope it will work well for everyone, and I will surely do my part,
whatever that turns out to be.

All my best,
Eben

Dear Karen,

You are an inspiration to all the women in the FOSS world. I kook
forward to working closely with you once again in your new role.
Congratulations!

P.S. We must go out for drinks someday!

--
Warm Regards
Mishi Choudhary, Esq.
Legal Director
Software Freedom Law Center
1995 Broadway Floor 17
New York, NY-10023
(tel) 212-461-1912
(fax) 212-580-0898
www.softwarefreedom.org

Executive Director
SFLC.IN
K-9, Second Floor
Jangpura Extn.
New Delhi-110014
(tel) +91-11-43587126
(fax) +91-11-24323530
www.sflc.in

Exhibit 3

Date:	Fri, 11 Apr 2014 11:11:58 +0200
To:	Mishi Choudhary <mishi@softwarefreedom.org>,
	gerloff@fsfeurope.org
From:	Karen Sandler <karen@sfconservancy.org>

Subject: introduction

Karsten,

Meet Mishi, Legal Director of SFLC and Director of SFLC.in and all
around someone you should know.

Mishi,

Karsten, President of FSFE, just mentioned that he hadn't met you so
naturally I offered to introduce you.

:)
karen

```
This is an OpenPGP/MIME signed message (RFC 4880 and 3156)
--s3vcKi48SE9Abjd8I5uencoGt498NGACt
Content-Type: text/plain; charset=ISO-8859-1
Content-Transfer-Encoding: quoted-printable
```

Hi Karsten,

Great to connect virtually! I have heard a lot about you and look
forward to meeting you in person.

Karen,

Thanks a ton for connecting us!

On 04/14/2014 10:21 AM, Karsten Gerloff wrote:
> Hi Mishi,=20
>
> @Karen: many thanks for the introduction!
>
> On Fri, Apr 11, 2014 at 11:11:58AM +0200, Karen Sandler wrote:
>> Karsten,
>>
>> Meet Mishi, Legal Director of SFLC and Director of SFLC.in and all
>> around someone you should know.
>>
>> Mishi,
>>
>> Karsten, President of FSFE, just mentioned that he hadn't met you so
>> naturally I offered to introduce you.
> I'm delighted to meet you virtually!=20
>
>
>
> Best regards,
> Karsten

--=20
Warm Regards
Mishi Choudhary, Esq.
Legal Director
Software Freedom Law Center
1995 Broadway Floor 17
New York, NY-10023
(tel) 212-461-1912
(fax) 212-580-0898
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Executive Director=20
SFLC.IN
K-9, Second Floor
Jangpura Extn.
New Delhi-110014
(tel) +91-11-43587126=20
(fax) +91-11-24323530
www.sflc.in
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Content-Description: OpenPGP digital signature
Content-Disposition: attachment; filename="signature.asc"

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Comment: Using GnuPG with Thunderbird - http://www.enigmail.net/

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Exhibit
4

Software Freedom Law Center

SFLC 10th Anniversary Conference

Where: Columbia Law School

When: October 31, 2014 9:00am to 5:00pm

Who: Ian Sullivan, Eben Moglen, Mishi Choudhary, Clint Adams, Software Freedom Law Center

FOSS Law: Where We Are, Where We Are Going

As we begin our second decade of working as counselors and advocates for software freedom, SFLC invites counsel, developers, enterprise users and other members of Free and Open Source Software (FOSS) communities to join us at a free conference exploring legal issues surrounding FOSS, present and future, held at Columbia Law School on Friday, October 31, 2014.

Martin Fink, CTO of Hewlett-Packard, will offer a keynote address on "Free Software and the Machine." Professor Eben Moglen, SFLC's founder and Executive Director, will speak on "Software Freedom in the Age of 'Cloud to Mobile': The Next Ten Years." SFLC Legal Director Mishi Choudhary and her team will discuss current issues in patent law, copyleft compliance, and the ongoing challenge to tax-exempt non-profit organization for FOSS communities. We will consider technical as well as legal changes—including memristor-based computing, disposable computers, and the economics of cloud architectures—that will have profound effects on FOSS and its legal arrangements in the decade to come.

For ten years, SFLC has been the intellectual and professional leader in FOSS legal practice around the world. If you want to know what the next ten years of legal evolution in FOSS are going to be about, join us at a meeting no one will want to have missed.

The conference will take place at Columbia Law School, 435 west 116th Street, NYC, on October 31, 2014 from 9am to 5pm. No registration is required and attendance is free but if room occupancy limits are reached preference will go to those who have pre-registered. To pre-register please send an email with your name and any company or project affiliation you choose to share to rsvp@softwarefreedom.org. NYS Bar members who attend will be eligible for free CLE credit and must either register beforehand with Columbia Law School or make use of on-site registration at 9:00am.

Conference Schedule

09:00–09:30 CLE registration + Coffee and Tea

09:35–09:50 Opening remarks
– Eben Moglen

09:50–10:40 "FOSS and the Machine"
– Martin Fink

10:45–11:35 Organizing FOSS entities
Mishi Choudhary moderating:

– JD Bean
– Bdale Garbee
– Karen Sandler
– Aaron Wiliamson

11:40–12:30 "Software Freedom in the Age of 'Cloud to Mobile': The Next Ten Years."
– Eben Moglen

12:30–13:30 Lunch (Provided)

13:30–14:20 Patents and Free Software
Eben Moglen moderating:
– Keith Bergelt
– Justin Colannino
– Leonardo Renna
– Stefano Zacchiroli

14:25–15:25 Technology in practice
– Clint Adams and Ian Sullivan "Technology of a law practice"
– Clint Adams "The distribution and the cloud"
– Ian Sullivan "Disposable computing"

15:25–15:40 Break

15:40–16:00 FOSS and Export regulations
– Marc Jones

16:00–16:50 Compliance presentation and QA
– Eben Moglen
– Mishi Choudhary

16:50–17:00 Concluding remarks
– Eben Moglen

Speaker Biographies

Eben Moglen is Executive director of the Software Freedom Law Center and Professor of Law and Legal History at Columbia University Law School. Professor Moglen has represented many of the world's leading free software developers. Professor Moglen earned his PhD in History and law degree at Yale University during what he sometimes calls his "long, dark period" in New Haven. After law school he clerked for Judge Edward Weinfeld of the United States District Court in New York City and for Justice Thurgood Marshall of the United States Supreme Court. He has taught at Columbia Law School since 1987 and has held visiting appointments at Harvard University, Tel Aviv University and the University of Virginia. In 2003 he was given the Electronic Frontier Foundation's Pioneer Award for efforts on behalf of freedom in the electronic society. Professor Moglen is admitted to practice in the State of New York and before the United States Supreme Court.

Mishi Choudhary is the Legal Director of the Software Freedom Law Center. Prior to joining SFLC, Mishi Choudhary was a litigator with areas of practice covering corporate and commercial Law with special emphasis on Information Technology Law, trademarks, copyrights and patents. Mishi is the founding director of SFLC.in based in New Delhi. She has an LLM degree from Columbia Law School, an LLB degree from Faculty of law, University of Delhi, and a Bachelors Honors degree in political science from Hindu College, University of Delhi, India. Mishi is a member of the Bar Council of Delhi, licensed to appear before the Supreme Court of India, all the State High Courts in India, in the State of New York, U.S. Court of Appeals for the Federal Circuit, and before the Southern District of New York.

Martin Fink is HP CTO, Director of HP Labs and General Manager of HP's Network Function Virtualization (NFV) group. Fink's research team at HP Labs, the company's exploratory and advanced research group, is responsible for anticipating IT trends to

address the complex issues that will face HP customers and society over the next decades. During his career at HP, Fink has worked in a wide range of roles. Most recently, Fink drove the strategy and execution of HP's Cloud business, launching the HP Helion portfolio of products and services, designed to help the industry transition to cloud-based provider and consumption models. As head of the NonStop Enterprise Division, Fink was responsible for the development, delivery, and marketing of the HP Integrity NonStop family of servers, database, and middleware software and solutions. He oversaw the Atalla Security Products line of network security processors for banking, Internet, and enterprise applications. Finally, he led the overall open source and Linux strategy across HP, helping the company gain external market leadership in Linux.

Clint Adams is Chief Technology Officer at the Software Freedom Law Center. Clint joined the SFLC in 2010 after a variety of odd jobs. He holds a bachelor's in Intercultural Studies, and over 17 years of experience developing Free Software. He loves Debian, GNU, and Haskell. Clint is the upstream maintainer of hOpenPGP, openpgp-asciiarmor, hopenpgp-tools, debianutils, fakeroot, libmsv, zomg, posh, Haskell libraries for SANE, WebDAV, MusicBrainz, and other software, as well as an infrequent upstream contributor to GNU FM and libre.fm, zsh, and other such things. He is obsessed with food.

Jonathan D. Bean (J.D.) is Counsel at the Software Freedom Law Center. J.D. holds a Juris Doctor from New York University School of Law where he was the Senior Articles Editor of the NYU Journal of Law and Liberty. He also has a Bachelor of Arts (BA) in Political Science from The George Washington University where he graduated magna cum laude. Prior to serving as Counsel for the Software Freedom Law Center, he spent the summer of 2011 as a Legal Intern at SFLC joining the organization in 2012 as an Attorney Fellow. J.D. is admitted to practice in the State of New York.

Keith Bergelt is the chief executive officer of Open Invention Network (OIN), the collaborative enterprise that enables innovation in open source and an increasingly vibrant ecosystem around Linux. Prior to joining the OIN, Mr. Bergelt served as president and CEO of two intellectual property Hedge Funds – Paradox Capital and IPI. Mr. Bergelt has served as a senior advisor to the technology investment division at Texas Pacific Group. He was a General Manager of the Strategic Intellectual Asset Management business unit at Motorola Corporation and served as Motorola's director of Technology Strategy. Prior to his extensive private sector experience, Mr. Bergelt served for twelve years as a diplomat with postings at the United Nations in NYC and the American Embassy in Tokyo, Japan.

Justin C. Colannino focuses his practice on free and open source software, patent law, and patent litigation. As Counsel at the Software Freedom Law Center he advised non-profit free and open source projects in all areas of free and open source development. Justin is also an experienced patent litigator, having worked as an associate at a major international law firm, and as a law clerk in the District of New Jersey. As of November, 2014 Justin will be associated with Wolf, Greenfield & Sacks, P.C. in Boston, Massachusetts.

Bdale Garbee drives open source strategy and advocacy within the company as an HP Fellow in the CTO Office. Most recently, he was HP Chief Technologist for Open Source and Linux. He took early retirement in 2012 and served briefly as Senior Open Source Adviser to Samsung before returning to HP in 2014. Garbee has been a Debian developer since the earliest days of the project, serving as Debian Project Leader (DPL) from 2002-2003. He currently serves as Chairman of the Debian Technical Committee. Garbee is president of Software in the Public Interest, represents the interests of individual members and developers on the board of directors of the Linux Foundation, and serves on the board of the Freedombox Foundation.

Marc Jones is Counsel at the Software Freedom Law Center. Marc graduated summa cum laude with a Juris Doctor (JD) from Quinnipiac University School of Law where he was the Research and Symposium Editor of the Quinnipiac Law Review. Marc also has a bachelor's degree in Political Science from the University Connecticut. Prior to joining SFLC as Counsel, he was an Attorney Fellow at SFLC. Before graduating from law school, he had acquired over a decade of experience as an IT Systems Architect at a top ranked public

research university where he focused on infrastructure design and security. He is admitted to practice in the State of Connecticut, the Commonwealth of Massachusetts, and the State of New York.

Leonardo Renna is Patent Counsel for Google, Inc. Prior to joining Google, Mr. Renna was Intellectual Property and Technology Counsel for MasterCard Worldwide. Before working in-house, Mr. Renna practiced intellectual property law at Brumbaugh, Graves, Donohue & Raymond and Baker Botts L.L.P. Mr. Renna holds a Bachelor of Science in Electrical Engineering from the Massachusetts Institute of Technology and a Juris Doctorate from Brooklyn Law School, where he graduated cum laude. After law school, Mr. Renna served as a law clerk to the Honorable Herbert J. Hutton of the U.S. District Court for the Eastern District of Pennsylvania.

Karen M. Sandler is Executive Director of the Software Freedom Conservancy, the nonprofit home of dozens of free software projects. She was previously the Executive Director of the GNOME Foundation. Karen co-organizes the award winning Outreach Program for Women administered by the GNOME Foundation. Prior to GNOME, Karen was General Counsel of the Software Freedom Law Center (SFLC). She continues to do pro bono legal work with SFLC, the GNOME Foundation and QuestionCopyright.Org. Before joining SFLC, Karen worked as an associate in the corporate departments of big law firms in New York and London. Karen received her law degree from Columbia Law School in 2000, where she was a James Kent Scholar and co-founder of the Columbia Science and Technology Law Review. Karen received her bachelor's degree in engineering from The Cooper Union. She is a recipient of an O'Reilly Open Source Award and also co-host of the "Free as in Freedom" podcast.

Ian Sullivan is Project Manager at the Software Freedom Law Center. Ian joined SFLC in 2005 after working as a paralegal. He received his undergraduate degree in Philosophy from Columbia College. In addition to his work with SFLC, Ian is the Executive Director of the Wikiotics Foundation, an educational non-profit that builds free software for language instruction. He also serves on the board of the Protocol Freedom Information Foundation and is the designer of the Book Liberator personal book scanning device.

Aaron Williamson is an attorney at Tor Ekeland, P.C., where he counsels software companies, startups, and other technology-focused clients on business transactions, FOSS and other intellectual property issues, regulatory compliance, and related matters. Previously, he worked as in-house counsel at IEEE and as a staff attorney at the Software Freedom Law Center, where he advised community free and open source software projects. He can be reached at aaron@torekeland.com.

Stefano Zacchiroli is Associate Professor of Computer Science at University Paris Diderot. His research interests span formal methods and their applications to improve software quality and user experience in the context of Free Software distributions. He has been an official member of the Debian Project since 2001, taking care of many tasks from package maintenance to distribution-wide Quality Assurance. He has been elected to serve as Debian Project Leader for 3 terms in a row, over the period 2010-2013. He is a Board Director of the Open Source Initiative (OSI).

Information Regarding New York CLE Credits:
Columbia Law School has been certified by the New York State Continuing Legal Education (CLE) board as an Accredited Provider of CLE programs. Under New York State CLE regulations, each live non-transitional CLE panel will provide one (1.0) credit hours that can be applied toward the Areas of Professional Practice requirement. CLE credit is awarded only for full attendance of a panel in its entirety. Attorneys attending only part of a Program are not eligible for partial credit for it, although they are most welcome to attend it. Attendance is determined by an attorney's sign-in and sign-out, as shown in the Conference registers. On sign-out, attorneys should also submit their completed Evaluation Form, provided at the Conference. Please note that NYS Certificates of Attendance will be sent out to the email address as it appears in the register unless otherwise noted there.

(Back to SFLC Event Index)

Exhibit 5

Karen,

Answering your questions---describing what our claims are and how we
substantiate them---is precisely the purpose of the meeting you have
been evading, and which we sought to have now, while all four relevant
parties are in the same city for less than two days. That should have
happened confidentially and discreetly in December 2014, as we
requested; we are still trying to bring it about now.

Board members on the various boards convoked here, not by us, will
probably be shocked to see individuals with responsible management or
board positions in their organizations trying to pull into the line of
fire their own colleagues individually, and their organizations
collectively, in order to protect themselves against personal
liability. Those readers who are lawyers will be particularly
appalled, no doubt, at the violations of duties of loyalty involved.

We are not going to bring claims against those whose actions do not
deserve to be sanctioned.

Too busy to meet was your story yesterday. But you have spent more
time in correspondence on this subject, by an order of magnitude, than
it would have taken to sit down with us yesterday, as we requested.
You have taken what ought to be a confidential, if no doubt tense,
conversation with your former employer and turned it into a
semi-public show demanding the attention of more than a dozen busy but
uninvolved bystanders. Despite all the rhetoric, you have not: (a)
explained your refusal to meet; (b) denied the fact of the copying and
misrepresentation of authorship that constitutes plagiarism; (c)
offered any defense other than a transparently false claim that it's
okay to plagiarize anything for which you have or don't need copyright
permission, such as public domain works; or (d) explained why the
simple, complete and honorable settlement we propose---namely the
publication of our document as we wrote it alongside your own document
at copyleft.org---should not immediately be adopted, settling the
entire matter peacefully and (were it not for your own conduct in
publicizing your wrongdoing) silently.

We are not required to bring claims you think we might bring, against
people you pick, in forums you choose, in order to confuse the issues
or to conflate the innocent with the guilty. The organizations on
whom you have tried to shed responsibility are not at fault: you and
Bradley are. We will if you choose meet with you to hammer out a
settlement on terms we have already indicated.

Your oft-repeated statement that "Conservancy considers this matter
closed" makes no sense. You and Bradley, not the Conservancy, are the
subjects of complaint, and the matter is closed when the complainants
are satisfied. We have offered easy terms, which you should accept
and faithfully observe.

Eben

Exhibit

6

Secure | https://mastodon.technology/@conservancy

Software Freedom Conservancy is a user on mastodon.technology. You can follow them or interact with them if you have an account anywhere in the fediverse. If you don't, you can sign up here.

Remote follow

Software Freedom Conservancy

@conservancy@mastodon.technol...

Software Freedom Conservancy is a 501(c)(3) public charity that acts as a non-profit home for Free, Libre, and Open Source Software projects.

14	1	213
Toots	Following	Followers

TOOTS   TOOTS WITH REPLIES   MEDIA

Pinned toot

Software Freedom Conservancy @conservancy   18 days ago
Supporting Conservancy is an investment in the future of #FOSS. Help us help more member projects, offer more services, and keep advocating for the issues that affect us all. Become a Supporter today! sfconservancy.org/supporter/

Software Freedom Conservancy @conservancy   3 days ago
While we were shooting the video we also got this awesome group shot. GSoC is always a great chance to meet up with our member projects!

Software Freedom Conservancy @conservancy   3 days ago
Watch a special message from our member projects: sfconservancy.org/blog/2017/de...

Google+   Q   Search Google+   ⠿   **Sign in**

Software Freedom Conservancy

156 followers · Conservancy defends and upholds your software f...

ABOUT

Posts

Software Freedom Cons...   5w
⋆ Public

SFLC Files Bizarre Legal Action
Against Its Former Client, Software

The Software Freedom Conservancy
provides a non-profit home and services

sfconservancy.org

+1 3   ▣   < 2

Software Freedom Cons...   8w
⋆ Public

Conservancy Applauds +Linux
Community's Promotion of Principled
Copyleft Enforcement

Conservancy Applauds Linux
Community's Promotion of

The Software Freedom Conservancy
provides a non-profit home and services

sfconservancy.org

+1 2   ▣   < 1

Software Freedom Cons...   33w
⋆ Public

Why GPL Compliance Tutorials Should Be
Free as in Freedom

a blog post by Bradley M. Kuhn

I am honored to be a co-author and

Software Freedom Cons...   46w
⋆ Public

Just about 12 hours to go for 28 more

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Software Freedom Conservancy   ▶ Subscribe 141

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Understanding The Complexity of Copyleft Defense by Bradley M. Kuhn at FOSDEM 2017
Software Freedom Conservancy
9 months ago • 224 views
After 25 Years of GPL Enforcement, Is Copyleft Succeeding?   ...

Software Freedom Conservancy uploaded a video 10 months ago

Cyborgs Unite! Karen Sandler's keynote at Campus Party 10
Software Freedom Conservancy
10 months ago • 78 views
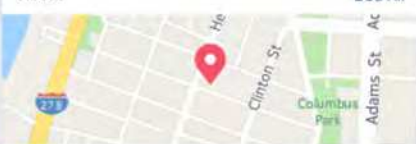
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Software Freedom Conservancy
11 months ago • 25 views
Michael Downey is one of the developers at the helm of our newest member project,   ...

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Chromium's Alice Boxhall Explains Why She Supports Conservancy
Software Freedom Conservancy

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Exhibit

7

software freedom
conservancy

The next $40,563 of support we receive will be matched thanks to Private Internet Access and an anonymous donor! Support Conservancy today!

$34,436 matched!

Teaching Open Source Joins Conservancy

June 15, 2017

Software Freedom Conservancy is proud to announce that Teaching Open Source has joined Conservancy as a member project. Teaching Open Source (TOS) is a community of educators, developers, and organizations who create resources and document best practices for teaching free and open source software development, principles, and methods in the classroom.

Conservancy, a public charity focused on ethical technology, acts as a home to more than forty member projects dedicated to developing, promoting, and defending free and open source software. Conservancy acts as a corporate umbrella, allowing member projects to operate as charitable initiatives without having to independently manage their own corporate structure and administrative services.

"We applied to join Conservancy in order to raise the visibility of the TOS community, and to provide a neutral platform for funding TOS community activities," said Heidi Ellis, Professor at Western New England University and a member of the Teaching Open Source Coordinating Committee."Conservancy membership will facilitate our ability to raise and spend funds in efforts that support student learning within FLOSS projects."

Gina Likins, University Outreach at Red Hat and member of the Teaching Open Source Coordinating Committee, added: "I'm excited to see Teaching Open Source join Conservancy, as a broader base of support will allow TOS to reach more instructors, communities, and students."

"Teaching Open Source is a critical initiative working to empower future generations of free and open source software contributors," said Tony Sebro, Conservancy's General Counsel. "Teaching Open Source's objectives go right to the heart of Conservancy's mission, and we look forward to investing our infrastructure and expertise into helping TOS flourish."

Connect with Conservancy on Mastodon, Twitter, pump.io, Google+, Facebook, and YouTube.

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software freedom
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$34,436 matched!

Conservancy Welcomes Homebrew as a Member Project

February 22, 2016

Software Freedom Conservancy proudly announces the addition of Homebrew, software package manager for Apple's OS X operating system as its newest member project. Homebrew is now one of the dozens of free and open source software projects who call Conservancy their non-profit corporate home.

"Homebrew is excited to join Conservancy together with so many great other open source projects that we rely on," said Mike McQuaid, Homebrew maintainer since 2009. "Conservancy will help our project 'grow up' and give us the stability around critical services and raised funds that we need." McQuaid also recorded the video here to share his thoughts on why Homebrew is joining Conservancy, and to support Conservancy's fundraising campaign.

"We are excited to have Homebrew join Conservancy," said Karen M. Sandler, Conservancy's Executive Director. "Homebrew provides a much-needed free software package management solution for OS X users. We're happy that they're becoming a part of the Conservancy family, and we look forward to providing them with the infrastructure and support they need to continue their development."

0:51

About Homebrew

Homebrew is a software package manager for Apple's OS X operating system. Homebrew installs the free and open source software that OS X users need that Apple didn't install by default.

Connect with Conservancy on Mastodon, Twitter, pump.io, Google+, Facebook, and YouTube.

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conservancy

The next $40,563 of support we receive will be matched thanks to Private Internet Access and an anonymous donor! Support Conservancy today!

$34,436 matched!

Conservancy Welcomes Etherpad as a Member Project, Launches Etherpad Instance

July 20, 2017

Software Freedom Conservancy proudly welcomes Etherpad as Conservancy's newest member project. Etherpad is is a highly customizable web-based editor providing collaborative real-time editing.

Conservancy, a public charity focused on ethical technology, is the home of over forty member projects dedicated to developing free and open source software. Conservancy acts as a corporate umbrella, allowing member projects to operate as charitable initiatives without having to independently manage their own corporate structure and administrative services.

"We're excited to be joining Conservancy," said John McLear, Etherpad's chief maintainer. "Conservancy is well-known for its expertise in free and open source software project administration and mentorship. Now that Etherpad is a member, we look forward to working with Conservancy to advance our project."

"Our staff are avid Etherpad users," commented Karen M. Sandler, Conservancy's Executive Director, "and we strongly believe that free collaboration tools like Etherpad can facilitate the growth and development of new projects in free software and free culture. Etherpad is a great fit for Conservancy."

To celebrate Etherpad's joining Conservancy, Conservancy is today launching its own Etherpad instance, which is available at pad.sfconservancy.org. Now anyone can use it to make, edit and collaborate documents.

Connect with Conservancy on Mastodon, Twitter, pump.io, Google+, Facebook, and YouTube.

Main Page | Contact | Sponsors | Privacy Policy | RSS Feed

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 4212971
Mark: SOFTWARE FREEDOM CONSERVANCY
Registration date: September 25, 2012

Software Freedom Law Center
Petitioner,
v.
Software Freedom Conservancy
Registrant.

Cancellation No. 92066968

DECLARATION OF PAMELA S. CHESTEK
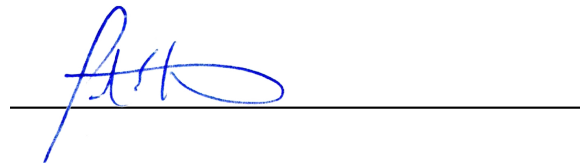**IN SUPPORT OF RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**
ON ITS AFFIRMATIVE DEFENSES

I, Pamela S. Chestek, declare as follows:

1. I am over the age of 18 and if called upon to do so could testify competently about the facts set forth in this declaration. The facts stated in this declaration are made on my personal knowledge.

2. Attached as Exhibit 1 is a true and correct copy of *Software Freedom Law Center Launches Conservancy*, Software Freedom Law Center (Apr. 3, 2006), https://www.softwarefreedom.org/news/2006/apr/03/conservancy-launch/, which was captured on December 8, 2017.

3. Attached as Exhibit 2 is a true and correct copy of Eben Moglen, *Twin Peaks and the GPL*, Software Freedom Law Center (Sept. 17, 2012), https://www.softwarefreedom.org/blog/2012/sep/17/twin-peaks-and-the-gpl/, which was captured on December 8, 2017.

4. Attached as Exhibit 3 is a screen capture of the Software Freedom Conservancy "Publications" page and a true and correct copy of excerpts from *A Legal Issues Primer for Open Source and Free Software Projects*, Software Freedom Law Center (June 4, 2008), http://softwarefreedom.org/resources/2008/foss-primer.html. The screenshot of the "Publications" page was captured on December 8, 2017. The citation to the article is for the html version; the pdf version of the content, which is attached, was downloaded the same day.

5. Attached as Exhibit 4 is a true and correct copy of excerpts from Eben Moglen & Mishi Choudhary, *Software Freedom Law Center Guide to GPL Compliance 2nd Edition*, Software Freedom Law Center (Oct. 31, 2014), https://www.softwarefreedom.org/resources/2014/SFLC-Guide_to_GPL_Compliance_2d_ed.html. The citation is for the html version; the pdf version of the content, which is attached, was downloaded on December 8, 2017.

6. Attached as Exhibit 5 is a true and correct copy of Eben Moglen, *Whither (Not Wither) Copyleft*, Software Freedom Law Center (Oct. 28, 2016), https://www.softwarefreedom.org/resources/2016/whither-copyleft.html, which was captured on December 8. 2017.

7. Attached as Exhibit 6 is a true and correct copy of Thomas Claburn, *Open-Source Defenders Turn on Each Other in 'Bizarre' Trademark Fight Sparked by GPL Fall Out* (Nov. 20, 2017) https://www.theregister.co.uk/2017/11/20/foss_sflc_sfc_gpl_trademark/, which was captured on November 21, 2017.

I declare that all statements made herein of my own knowledge are true and that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Pamela S. Chestek

Dated: December 10, 2017

2

<u>Certificate of Service</u>

I hereby certify that a true and complete copy of the foregoing "DECLARATION OF PAMELA S. CHESTEK IN SUPPORT OF RESPONDANT'S MOTION FOR SUMMARY JUDGMENT ON ITS AFFIRMATIVE DEFENSES" has been served on Software Freedom Law Center by mailing said copy on December 11, 2017 , via electronic mail to:

Daniel Byrnes
Software Freedom Law Center
1995 Broadway, 17th Floor
New York, NY 10023

Email: dbyrnes@softwarefreedom.org

By: _____
       Pamela S. Chestek

Exhibit 1

SERVICES
How we help our clients

NEWS
What we're doing

PUBLICATIONS
What we've said

CONTACT
How to reach us

PEOPLE
The SFLC team

News

Software Freedom Law Center Launches Conservancy

Software Freedom Conservancy offers nonprofit umbrella protections to free and open source projects

April 3, 2006

The Software Freedom Law Center (SFLC), provider of pro-bono legal services to protect and advance Free and Open Source Software (FOSS), today announced it has established the Software Freedom Conservancy to provide free financial and administrative services for a collection of FOSS projects through a single entity.

"The mission of the Conservancy is to provide free and open source software developers with all of the benefits of being a tax-exempt corporate entity without having to do any of the work of setting up and maintaining such an entity," said Dan Ravicher, legal director for the Software Freedom Law Center and one of the initial directors of the Conservancy. "Letting projects pass off the mundane administrative burdens placed on those wishing to benefit from nonprofit status is a significant way to keep developers focused on what they do best – writing software".

The Software Freedom Conservancy (conservancy.softwarefreedom.org) will be a fiscal sponsor for FOSS projects by providing free financial and administrative services to its members. It will provide individual developers protection from personal liability for their projects and will seek to provide participating projects with tax-exempt status, allowing them to receive tax deductible donations. The Conservancy will file a single tax return that covers each of the member's projects and will handle other corporate and tax related issues on behalf of its members. In addition, the Conservancy can hold project assets and manage them at the discretion of the project, which removes another fiscal burden from developers who are focused on software innovation.

"We understand the importance of having our legal, financial and administration houses in order, but our focus and energy needs to be on our code," said Alexandre Julliard, The Wine Project, one of the Conservancy's initial members. "The Software Freedom Conservancy gives us the opportunity to join with fellow community projects to gain needed legal and fiscal protections in a market where disruptive technologies such as open source software sometimes generate aggressive actions from other market participants".

Other initial members of the Conservancy include SurveyOS, BusyBox and uClibc. For more information about the Conservancy and how to become a member, please visit conservancy.softwarefreedom.org.

Other SFLC news...

SEARCH

DuckDuckGo Site Search

Go

Exhibit 2

Software Freedom Law Center

SERVICES How we help our clients	**NEWS** What we're doing	**PUBLICATIONS** What we've said	**CONTACT** How to reach us	**PEOPLE** The SFLC team

Blog

Twin Peaks and the GPL

By Eben Moglen | September 17, 2012

Twin Peaks Software, Inc., which makes proprietary data replication and cloud storage software, sued Red Hat and its subsidiary Gluster for patent infringement back in February. Last week, Red Hat filed a counterclaim in that litigation, alleging copyright infringement by Twin Peaks in misappropriating GPL'd software.

Red Hat's counterclaim asserts that Twin Peaks has copied GPL'd code, from mount, into their proprietary mount.mfs utility, which is distributed to licensees of their data replication products. Red Hat holds copyright on most of the code in the relevant version of mount, which is part of the util-linux package.

The facts supporting Red Hat's counterclaim have not yet been proven; they are merely allegations. The legal form in which Red Hat has made its counterclaim is the standard one pioneered by the clients I have worked with over the years. Red Hat points out that their code in mount is only licensed under GPLv2, and can only be redistributed, in modified or unmodified form, by Twin Peaks or anyone else, under the terms of GPLv2. If distributed inside a proprietary program, the code is plainly not being used according to the terms of GPLv2. So if Red Hat is correct that Twin Peaks has put code from mount inside mount.mfs, it has no license for that use of the code, and is infringing Red Hat copyright. Indeed, if the allegation is correct, Twin Peaks has lost any rights to distribute mount in any form under the automatic termination provision of GPLv2.

Red Hat's counterclaim should survive a motion to dismiss in the trial court, because it states a claim on which, if the facts are true, Red Hat is entitled to relief. We shall see in due course whether Red Hat can prove the facts it has alleged.

In the meantime, the allegations raised by Red Hat are very grave. Not only has Twin Peaks initiated patent aggression against members of the FOSS community, it is apparently making use in its business of the very FOSS produced by the community member it is suing. And not only is it making use of that FOSS, it is allegedly doing so in gross disrespect of the rights of the parties who have made the valuable software they are using. First, if Red Hat is correct, they take our software without playing by our rules, and then they attack the community using their doubtful patent.

Such betrayal of the community while making use of its software is a particularly severe offense. If Twin Peaks is in fact ripping off the community while also suing one of our leading commercial redistributors, serious consequences should follow.

Red Hat has been a significant supporter of SFLC since I founded it. But in this as in all similar situations, SFLC's primary concern is protection of the rights and interests of our clients, non-profit makers and distributors of FOSS. SFLC will now begin an investigation of Twin Peaks' products, to ascertain whether any of our clients' rights are being infringed through the violation of FOSS licenses. We hope that other organizations

around the world, including <mark>GPL-violations.org and the Software Freedom Conservancy will do likewise.</mark> Community defense is the crucial guarantor of a level playing field for businesses, as it is the heart of protecting freedom for developers. We need to know the truth about Twin Peaks' practices, and we must take whatever steps are appropriate when the truth is known.

Please email any comments on this entry to *press@softwarefreedom.org.*

Tags: patents, community, Software Freedom Law Center, Software Patents, Eben Moglen, gpl, copyright, enforcement, free software, social justice, licensing, Copyright Law, gnu

Other SFLC blog entries...

Privacy Policy · Colophon

Exhibit 3

Software Freedom Law Center

SERVICES
How we help our clients

NEWS
What we're doing

PUBLICATIONS
What we've said

CONTACT
How to reach us

PEOPLE
The SFLC team

Publications

The Linux Kernel, CDDL and Related Issues

This document explains licensing issues as they relate to the Linux Kernel and CDDL–licensed code.

Read or download: HTML

SFLC's Guide to GPL Compliance
2nd Edition

How to read, understand, and comply with the provisions of the GNU GPL family of free software licenses, including a discussion of the relation of governance to compliance, and practical advice about responding to inquiries or compliance complaints from copyright holders.

Read or download: HTML PS PDF

SFLC's Legal Issues Primer

The Software Freedom Law Center publishes a primer for free, libre, and open source software developers seeking to understand the legal implications of community development and distribution of software.

Jump to a section: Copyrights · Patents · Trademarks · Nonprofits

Get the whole primer: HTML PS PDF

Other Publications

WHITEPAPERS

Free Software Distributions and Ancillary Rights

Distributions of free software involve sharing of computer program, which is mostly governed by copyright law. Other legal rights, involving trademark, patent, trade dress protection, protection against unfair competition, and other legal doctrines are potentially involved as well. When hundreds or thousands of programs and associated files containing documentation or configuration data combined into "packages" are

MARCH 27, 2017

HTML PDF

INDEX

» Whitepapers
» Opinion Letters
» Case Resources
» Amicus Briefs

SEARCH

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Go

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**Software Freedom
Law Center**

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fax +1–212–580–0898
www.softwarefreedom.org

A Legal Issues Primer for
Open Source and Free Software Projects

Richard Fontana
Bradley M. Kuhn
Eben Moglen
Matthew Norwood
Daniel B. Ravicher
Karen Sandler
James Vasile
Aaron Williamson

Version 1.5.2
4 June 2008

commingle their funds with those of the corporation or fail to maintain the appropriate corporate records (like minutes of board meetings, for example). If this should occur, the individuals involved would be personally liable for the responsibilities of the corporation. Additionally, individuals could be personally liable for negligent behavior or illegal activities.

Creating and maintaining a corporate form is a lot of work, as we discuss below, and may not be the appropriate organizational structure for a FOSS project. If the project does not consist of more than a few individual developers it may make sense to continue to work in an individual capacity.

3.1.3   Umbrella Organizations and Fiscal Sponsors

Another option available to free software projects is to join an already existing nonprofit organization. There are several tax exempt organizations that act as an umbrella organization and provide fiscal sponsorship to the free software projects that join them. The key advantage to joining an umbrella organization is that new projects do not have to bear the expense or administrative burden of incorporation. Umbrella organizations establish their own board of directors, keep the books for the organization and ensure that the entire organization conducts its activities in accordance with the appropriate state corporate laws and the federal and state tax laws.

Software Freedom Conservancy

Because many of its clients could benefit from the protections of having a legal entity as well as tax exemption status, but were reluctant to pay the fees associated with formation or dedicate the time necessary to start and maintain a tax exempt nonprofit, the Software Freedom Law Center has established The Software Freedom Conservancy. Since its launch in 2006, the Conservancy has grown to include free and open source software projects active in a wide range of fields. Projects that wish to join the Conservancy must apply to be evaluated by the Conservancy's Project Evaluation Committee. Once a project joins, it can receive donations that are deductible to donors under U.S. tax law and benefit from financial and administrative services that the Conservancy offers. The Conservancy has chosen not to charge administrative fees to its member projects and to rely on donations to support its activities at the umbrella level. It does not require that projects assign their copyrights to the Conservancy, nor does it require that they choose any one particular free software license.

Exhibit 4

Software Freedom Law Center Guide to GPL Compliance
2nd Edition

Eben Moglen & Mishi Choudhary

October 31, 2014

is a problem far more infrequent and less difficult to resolve. Efficient management of the risks of higher concern lies in making sure you can provide, for example, precisely corresponding source code and make-files for a copy of the Coreboot bootloader, Linux kernel, Busybox, or GNU tar that you included in a product you shipped two years ago.

4. Don't rely blindly on code scanners as they work too late in the process to improve your governance and too early in the process to catch problems in your delivery and post-sale provisioning. They do less important parts of the job expensively, and more important parts of the job not at all. Use them, where they are cost-effective, as a supplement to your own governance and verification processes, not as a primary tool of risk management.

Handling Compliance Inquiries

Between us, the authors have spent almost thirty person-years enforcing the GPL. We have, individually or collectively through SFLC, participated in every community enforcement of the GNU copyleft licenses ever brought to court in the United States. We have helped to settle dozens of compliance disputes for every one that has ever reached the point of litigation.

In this context, too, we have seen the consequences of mutual misunderstanding. Community parties bring forward complaints of non-compliance in order to achieve compliance. Commercial parties often expect compliance disputes to result in monetary demands or efforts to interfere with trade secret treatment of proprietary software, and respond defensively in consequence. Community parties, accustomed to the software engineering practices of the FOSS world, sometimes assume that commercial parties who cannot swiftly produce complete and corresponding source code for copylefted programs they intentionally included in their products are engaged in deliberate obfuscation.

In our experience, skilled facilitation of communication between parties at the early stages of the process can prevent these misunderstandings from escalating. A few guidelines about what to expect, accompanied by some historical examples, may help:

1. *Return the call with the right person.* The single most important rule of successful handling of compliance complaints is to maintain commu-

nication. Routing FOSS compliance issues to a particular individual who understands the internal software governance mechanisms, and can serve as the key public contact with the community when compliance concerns arise, may be the most effective way to resolve compliance matters. No community party has ever brought a compliance enforcement lawsuit against a party who responded cooperatively to its initial communications.

In one instance, a major multinational consumer electronics manufacturer which had repeatedly failed to respond to requests for fulfillment of source code obligations over many months was removed from a multi-defendant compliance enforcement lawsuit hours before the complaint was filed, as a result of mere verbal assurances of swift cooperation made personally by the corporation's general counsel in a telephone conversation with one of the present authors, who was acting on behalf of the complaining copyright holder.

2. *Assume preparation on the complainant's side.* The organizations traditionally bringing complaints of copyleft non-compliance (in historical order, the Free Software Foundation, GPL-violations.org, the Software Freedom Law Center, and the Software Freedom Conservancy) all fully investigate and verify complaints referred to them before making contact with apparently non-complying parties. Complainants will be prepared to substantiate the facts on which their complaint is based.

   In an unintended inclusion case arising some years ago, a global manufacturer used an entire copylefted library to provide essential features in one of its flagship proprietary software products. When we contacted them on behalf of the copyright holder, the corporation's legal counsel for FOSS matters repeatedly denied that such an event could have occurred, or that the code which our engineers could clearly see in their product was present there. We had to insist, three times, on their rechecking with their own engineers before they agreed that, indeed, such a mistake had occurred. Once our view of the facts had been verified, the matter was swiftly settled, without litigation and without payment of monetary damages.

3. *Let engineers be a part of the process.* The most time-consuming and difficult part of resolving most compliance matters, in our experience, is verifying that source code is indeed complete and corresponding. Without direct contact between software engineers on both sides, the resolution of the technical issues involved in demonstrating that the

Exhibit 5

SERVICES
How we help our clients

NEWS
What we're doing

PUBLICATIONS
What we've said

CONTACT
How to reach us

PEOPLE
The SFLC team

Whither (Not Wither) Copyleft

Eben Moglen

October 28, 2016

I know that the very worst thing you can do is to assign yourself the speech between the end of the conference and the drinks.

The only sensible use for this time is the thanks, which I will of course get to in just a moment.

I am going to trench upon your patience just for a little while for some substantive thoughts that this afternoon raised for me.

As you can see, I have had a plan for today, which was a plan about how the law of free software interacts with the technical future.

There was a particular point, which was to discuss not just blockchain in itself, but the nature of the coming change in how we think about data that we share. I wanted to point to the software engineering consequences of that change for free software itself.

The other subject that we have been talking about today—which I think is crucial to the combination of ideas we have presented here—is the particular form the discussion about copyright compliance and license violation has now entered.

I wanted to talk to you about this subject even before some events I referred to this morning, which have brought it into yet sharper relief for me.

We are not and we never were copyright maximalists.

We did not do what we have been doing for the past 30 years to build free software on the basis of the assumption that freedom required us to chase down and punish everybody who ever made a mistake or who even deliberately misused copyrighted software made for sharing.

When I began to work with Richard Stallman in 1993, GPLv2 was 18 months old. And although I had been thinking about what all of this meant for some little while, I was working on making the world safe for public key encryption, so the free software copyright licensing system was something of which I was only dimly aware.

And in the course of the first crypto wars, Richard Stallman contacted me, said he had a problem and could I help him with it.

And I said, "Yes. I use emacs every single day, and it will be a very long time before you exhaust your entitlement to free legal help from me."

So I went and did what he needed done, and then I thought to myself, "this is the most important place for a lawyer to work right now."

"If I could just sit on Richard Stallman's email stream and have him send me what he thinks needs a lawyer—because anybody in the world who had a problem that involved freedom and computers knew one email address, and that was rms@gnu.org—pretty soon I could figure out what it was that actually needed doing."

Very rapidly I realized that what needed doing was getting people to spontaneously comply with law instead of having to fight them each and every time.

Spontaneous compliance is the only conceivable way to run a legal system, I must tell you.

The United States is a country with an extraordinary amount—apparently—of complaining about taxes every four years or every two.

But every year, Americans pay their taxes, and they don't do it because they see crowds of people sent to jail. They do it because spontaneous compliance is the way law really works.

The problem of legal engineering which presented itself to me in 1993 and the problem we are still talking about this afternoon is how to ensure spontaneous legal compliance, not how to figure out an adequate degree of coercion which will make an adequate degree of compliance at the other end.

The fundamental problem as it presented itself to me in 1993 is the problem as it still presents itself to me now.

Coercion does not work if you have to do so much of it that you can't afford it.

And coercion only works so long as you never lose any fight anywhere, which is why you have to keep equipping your police with bigger and bigger guns and there is always the risk that they will use them.

I did not want then and I do not want now to pretend that the way that we secure compliance with copyright law with respect to free software is by chasing down people and making them comply.

It *is* important every once in a while to set an example.

Therefore it is important every once in a while to declare that you're in a last-resort situation, and there's nothing else that you can do but to resort to litigation.

I understand that, at the present time, there are a large number of people who are living in that expanding boundary of free software use and redistribution that we have all been talking about.

Given where they work—the particular software they work on, the particular forms of downstream use that are most important to them—they run into infringement situations in this outer boundary area, and they therefore believe that everybody in the world doesn't get it about free software, and even that everybody in the world is a crook and that everybody in the world is trying to steal free software and make bad use of it.

What I thought was so important about Greg [Kroah-Hartman] and Ted [T'so] and the point that they came here to make today was this: they say that if you are sitting in the middle of the single most commercially valuable free software project in the world, and you have thousands of people helping you to make it, fighting with every single infringing person is not the way to win.

Converting every single person is the way to win.

Fighting can only conceivably be valuable if it is on the way to converting people.

It cannot possibly stand on its own.

I have some fine clients and wonderful friends in this movement who have been getting

rather angry recently.

There is a lot of anger in the world, in fact, in politics. Our political movement is not the only one suffering from anger at the moment.

==But some of my angry friends, dear friends, friends I really care for, have come to the conclusion that they're on a jihad for free software.==

And I will say this after decades of work—whatever else will be the drawbacks in other areas of life—the problem in our neighborhood is that jihad does not scale.

What we have been hearing this afternoon from the lawyers I have been friends and colleagues and occasional professional adversaries with over these decades is that in the industrial use of free software scale is what matters.

And we on our side in the community of free software makers have to understand that scale is what matters to us too.

The problem with jihad is not that it's not virtuous or that making people obey the rules is somehow wrong.

I like policemen and police forces a lot. But I know that the amount of policing necessary to produce perfect compliance is an amount of policing we can neither afford nor tolerate in the society where we live.

So regrettably, I have to draw some factual conclusions to your attention:

First, if at any time in our long association over the past 23 years—this century, last century, it doesn't matter: If Richard Stallman and I had gone to court and sued a major global public company on a claim of copyright infringement that was weak enough to be thrown out of court on a motion to dismiss, we would have destroyed the GPL straightaway.

If we had shown that we were prepared to risk large on coercion, even against a bad actor in our own judgement—if we had done that without adequate preparation to be sure that we won—we would have lost an example of coercion and nobody would have trusted us again.

I did sue people. It's true.

Greg referred to the way in which when the busybox developers thought they wanted to start suing and I did it for them, the results may not have been the ones they most wanted. That happens with clients all the time, particularly clients who go to court: They get something which is not quite what they wanted.

But I thought that it was important then because busybox was being embedded in everything.

And in the moment at which we were then living, in which the frontier of use and redistribution was expanding so rapidly, it seemed to me that it was necessary to get people's attention.

And I thought then, as I think now, that the people whose attention you need to get are the people who don't pick up the phone when you call them.

We thought that people you can't contact, people you can't get to answer the phone, people who will never spontaneously comply–they won't even answer your mail–may be the right people to make an example of.

But on the night before we filed the busybox cases in 2009, I chased down in Japan at 2:00a.m. the general counsel of one of the organizations we were going to sue the next day–a very large very powerful, very reputable company.

And I said to him, "If you give me your personal assurance that you're going to fix this problem, tomorrow you will not be sued. I will take your word for it. Nothing more."

And he said yes, and I said yes. And they were not sued the following day because all we wanted was for people to pay attention and bring their engagement to the party.

Even at that level, too much coercion—and we are still arguing about whether that was enough or too much—too much coercion was surely not what I wanted to apply.

Second: If when Scott and Terry and their colleagues at IBM and Hewlett-Packard first began to come to free software, when they first wanted to recommend it and use it and maybe even distribute it themselves or encourage other people to distribute it for them, we had criticized them for not being non-profit virtuous enough, if we had said "we are suspicious of you," let alone if we had threatened, "one step over the line buster and we will sue you"—everything else that we wanted to do would have become impossible immediately.

If we had not acted as Greg and Ted said that they must act on behalf of the great project that we all love, if we had not welcomed everybody with open arms and made clear that the commercial exploitation of the software was our hope not our fear, we would have achieved absolutely nothing that really mattered to use about freedom.

Third: We spent years scrupulously getting work-for-hire disclaimers from every business and every university that employed or educated a contributor to GNU.

Every time we took a right, we took a disclaimer to be sure. If there was any question that anybody needed to be contacted, we negotiated those disclaimers as long and as carefully as it took. The people who gave us work-for-hire disclaimers, they didn't "get" free software, I assure you. They were simply being asked to say that it wasn't work-for-hire, that some programmer who worked for them was working on a project in her or his spare time.

But suppose we hadn't gotten those disclaimers—suppose we hadn't proved to everybody that we were not trying to solicit rights on which they had a claim—if we had, for example, gone around and asked people to give us rights and software they had written while working at other companies, without every talking to those company's lawyers. In that case not only would we have destroyed all trust, not only would we have made it absolutely impossible to achieve what we really wanted, I would have put my law license in danger.

I think that all three of those are uncontroversial propositions.

But in case you're inclined to doubt any of those propositions, I have to tell you that people in my world, people in my neighborhood, people in my movement, people in many cases whom I trained, have conducted those same experiments over the last two years.

The results have not been any different than I would have expected.

We have created for ourselves some troubles.

And there are other people out there creating troubles for us.

Here [*shows slide*] is a current NSF funding solicitation for a free software-intended project. NSF is in fact soliciting a research funding application from a client of mine which makes free software.

And this solicitation is designed to support them. Except it isn't, because they're a GPL'ed project:

> All projects agree to distribute all source code that has been authored while working on an NSF/BigCorp award under a BSD, Apache or other equivalent open source license. Software licenses that require as a condition of use, modification and/or distribution that the software or other software incorporated into, derived from or distributed with the software be licensed

> by the user to third parties for the purpose of making and/or distributing derivative works are not permitted. Licenses not appropriate thus include any version of GNU General Public License (GPL) or Lesser/Library GPL (LGPL), the Artistic License (e.g., PERL), and the Mozilla Public License.

Don't even think of applying for research funding if you're going to make copyleft free software.

Now if you think that that's a little much, how about this, from the same solicitation?

> Awardees may file patent applications, providing that they grant to BigCorp a non-exclusive, worldwide, royalty-free, sub-licensable license to all intellectual property rights in any inventions or works of authorship resulting from research conducted under the joint award.

So, as it turns out, not only can you patent some software here but all your intellectual property rights—that is including your copyright since it's all works of authorship—will be non-exclusively licensed to Big Corp.

I have changed Big Corp's name to protect the theoretically innocent.

This is a current DARPA funding solicitation also for a project that makes free software:

> The program will emphasize creating and leveraging open source technology and architecture. Intellectual property rights asserted by proposers are strongly encouraged to be aligned with non- viral open source regimes. Exceptions for proprietary technology will be considered only in compelling cases. Make sure to carefully document and explain these reasons in submitted proposals.

Once again, you are strongly urged to make wonderful open source software under this award. Don't think of using copyleft. We don't want you to. So have to put a special explanation in the grant request, which is of course equivalent to "thanks but no thanks."

This I must tell you: if you want to talk about curing cancer, cure this for me.

This is more dangerous than all the copyright infringement by accident or deliberation occurring out there in the free software world right now.

This will make copyleft wither away.

Because throughout the research infrastructure in this wonderful great country of ours, if copyleft is not allowed, then a whole generation of the most talented people we work with will come to the conclusion— before they get their BA, before they get their doctorate, or before they decide to go and do something in industry—they will already have concluded that there is something wrong with copyleft and you shouldn't use it.

I don't know any way to sue this out of existence.

I don't know any way to deal with this militarily. This is a diplomatic challenge.

This is a diplomatic challenge that requires lawyers who know how to do this work, which is not done by lawyers who sue people.

It is not about coercion. It is not even about encouraging people to convert.

It's about reversing a problem that we have partially brought on ourselves and which other people are taking advantage of "bigly," if you ask me.

This is where the limits of counseling meet the limits of coercion: the real answer is that

you have to have a great big ecosystem and everybody has to believe in it.

Or else you have to have as many lobbyists as BigCorp, and they have to be spread all over the research infrastructure, assuring copyleft's future.

So what I want to say about all of this is that we are now at a turning point.

The good news of today is that this turning point should carry us all from the stages of fear and compliance to the stages of engagement and leadership.

We are now actually ready. I don't mean ready plus or minus three years or ready plus or minus the regulators of fintech.

I mean we are ready now with, SPDX and OpenChain and better tooling and Debian machine-readable copyright files that read on everything that everybody really uses.

We are ready to begin to reduce the costs of compliance and lowering the costs of finding how to comply, to a level which really will allow us to do what Greg and Ted were talking about: country-by-country and commercial environment-by-commercial environment all around the world, making things just work.

I remember how much Nokia admired Apple for the just-works zen of it all.

I agree with [Jeremiah Foster] that it is awfully good that we got their Maemo development off the floor and into things like cars, because it was wonderful stuff.

I'm not going to tell stories now about how hard it was to try to get Nokia not to fly into the side of the mountain with that stuff back in 2010. It was a sad experience.

But what we have now is the opportunity to avoid all the evolutionary dead ends that ever beset us.

We have an opportunity to put this free software where we want it, which is everywhere, and to make it do what we want, which is to spread freedom.

We're not in a place where the difficulty is how do we get enough ammunition to force everybody to comply.

We don't need ammunition.

We need diplomacy.

We need skill.

We need to work together better.

We need to understand how that working together purposively brings us to the point where everyone is not afraid of FOSS anymore and we are not worried about their complying anymore.

We are just all engaging and leading the task of making free software.

But I have to convince a lot of people of that, and not all of them are on the so-called other side.

That process is going to be a complicated one

It's going to take a couple of years.

We have some backing up to do and some moving forward to do at the same time.

And although anarchism is good at moving in many directions simultaneously, it is not always good at understanding where it has to back up and where it has to move forward.

But this will make us.

Because the long-term threats to copyleft are not to be found in people who aren't doing it quite right.

The long-term threats to copyleft are not to be found in the idea that too many people are getting away with too much and we have to go and get on our motorcycles and run them down and pull them over to the side of the road and give them a ticket.

That's simply not the model that is relevant right now.

And not everybody fully understands that.

So from my point of view, the purpose of today—with blockchain, and thinking about what the lawyering we've all done for decades means, and the purpose of talking to the clients about what they really need—is to make the point that we are not going to war to save the GPL.

That's not where we are right now.

We're not even going to war to save copyleft right now.

We are certainly not going to war to save any projects right now.

That's just destroying the village in order to save it.

And we've never been that kind of lawyers.

And we're not going to become that kind of lawyers.

What we do have is a real problem in deciding how to make copyleft relevant forever.

There are a lot of smart people in this room who in their quiet moments face-to-face with me or with other people here have been known to say, "You know, I think copyleft might be becoming irrelevant now.

"It was good. It put some principles deep in everybody's minds. It gave everybody a real sense about what our aspirations are.

"But from an operational point of view, we don't need it anymore."

I fear that copyleft's most powerful supporters have helped to bring people to that conclusion.

The purpose of today—even before news reached me from the outer world—the purpose of today was to say that's also not where we are.

Where we are is: copyleft is a great idea that changed the world. It needs refreshment now in order to appeal to a younger generation of people who write programs for sharing.

In order to make it appeal to those people who write programs for sharing, we need to make it simpler to use, quicker to understand, and better at doing all the jobs it's supposed to do.

And we need to refrain from going unnecessarily to war.

The lessons that we learned over the last quarter century are still good: That way won't work.

I agree with the people who have suggested that if a campaign of coercive compliance is carried just a moment too far, willingness to use copyleft among the rational businesses of the world will decline to a point which is dangerous to freedom, because I do believe that copyleft is important to freedom.

Indeed, I think it's crucial to freedom.

Indeed, that's what I was taught by the greatest computer programmer I've ever known.

So my point here—if it's okay just to have a point when people should already be drinking and dancing—my point is let's not get confused. This is not war time.

This is diplomacy time.

Skill counts. Agility counts. Discretion counts.

Long credibility counts.

Ammunition? Ammunition is worthless because wherever we fire it, we work everywhere and it's only going to hit us.

* * * * *

Now I don't have to keep us much longer, because what is left is thanks.

My thanks of course begin with the people I work with, without whom all of this would not be possible.

I've trained a lot of lawyers, and I choose carefully whom I work with, or at least I believe I do, which means I'm right about half the time.

But with Mishi I am right 100% of the time.

I have a legal director and a law partner and a partner in policy-making around the world who teaches me every single day, and who I deeply believe will be here when I have fallen under the bus.

There's no kind of gratitude like the gratitude of knowing that you've got a partner who's got your back.

To Daniel Gnoutcheff, who has spent all day long making everything work. Daniel's job is running our network and keeping our firewall up and keeping the NSA out and easy stuff like that.

When I say to him, "so you're a multimedia guy and you're running a conference, and everything will work and the stream will be perfect and we will do free software video streaming and live audio," he says, "Okay, that's true." You understand why I need to thank him particularly. I saw him leave our internal IRC channel this morning at 1:25a.m. and I thought, "he's going to be back at 8:15?" Thank you.

Tanisha Madrid, who keeps our money and our time and who had to go and get her two kids after she had to go and drop them off this morning on the way in order to be here at 8:15a.m. too—she won't be on the stream, but my deepest thanks.

To my associate Daniel Byrnes, who is now learning the trade with us and who is still a really good front-end HTML5 programmer and therefore helps me with what we need to do in that respect.

To Alice Wang and our other apprentices and hangers-on and people who have helped today, I can't tell you how important it is that we can just do a thing and people will turn up and help.

All of that is part of what I need to say.

Now, I am a guy who needs a personal assistant. I have gotten to the stage where I really am quite incompetent in the world. Michael Weholt came to me earlier this fall, and I think he thought that he could probably do the job.

And then we said, "Oh and by the way, you're putting on a conference."

And he said, "well I've never put on any conferences, but as long as it's not the Academy Awards." And of course it isn't the Academy Awards, although here I am talking at

midnight. Michael deserves a special round of thanks because he was worried as hell about it and he's made everything work.

Once again to Keith Bergelt and OIN and to David Marr and Qualcomm Technology Industries, I'm grateful for particular support in making sure that there was sufficient free food and will be sufficient free beer.

But I do have one more thing to say; I do have one more kind of thanks to offer.

And they are to me the deepest—and today at least—the most moving thanks of all.

I cannot stand here before you without ending with my thanks to Richard Matthew Stallman.

He invented the world I live in.

Years ago, Larry Lessig said that Richard Stallman had invented the twenty-first century.

And I said, well, that may or may not be true, but any twenty-first century Richard Stallman did not invent is a twenty-first century I won't consider it safe to live in.

And that's still true.

To my comrade, to my client, to my friend Richard Stallman: my deepest and most determined thanks.

There is nothing, nothing in the world, that could ever divide us as much as we have been brought together by the dream that we have shared and that we continue to give our lives to.

It could not have happened without one man's thinking.

At Red Hat, there used to be—back in the old days before the Progress Energy Tower and all the wonderful things that have followed from Red Hat's commercial success, back when it was just barely not Bob Young's and fully Matthew Szulik's—there used to be up on the wall in the reception area a painted motto.

It said "Every revolution begins as an idea in one man's mind," which is a quotation from Ralph Waldo Emerson.

And deep in the American grain—as deep in the American grain as Ralph Waldo Emerson himself—is Richard Stallman, whose dream it was that made the revolution I'm still trying to kick down the road towards some finish line or other I won't live to see.

To him, to you, to all of us—to the people who have made this stuff, to the people who have shared the stuff, to the people who have rolled up the barbed wire and carried it away so we could all just do the work and not have to worry about it—to my friends, to my clients, to the lawyers who have inspired me to teach them, my deepest and most unending gratitude.

Thank you all for coming. Thank you for being here.

Thank you for considering coming back, when next year, as Greg Kroah-Hartman says, we'll talk about free software licensing and machine learning.

Until then, happy hacking.

Exhibit 6

The Register®
Biting the hand that feeds IT

Software

Open-source defenders turn on each other in 'bizarre' trademark fight sparked by GPL fall out

Tempest in a teapot scalds FOSS world

By Thomas Claburn in San Francisco 20 Nov 2017 at 21:23   39 💬   SHARE ▼

Special report Two organizations founded to help and support developers of free and open-source software have locked horns in public, betraying a long-running quarrel rumbling mostly behind the scenes.

On one side, the Software Freedom Law Center, which today seeks to resolve licensing disputes amicably. On the other, the Software Freedom Conservancy, which takes a relatively harder line against the noncompliance of licensing terms.

The battleground: the, er, US Patent and Trademark Office. The law center has demanded the cancellation of a trademark held by the conservancy.

The SFLC, created in 2005, provides free legal services to non-profit open-source developers. The SFC, created in 2006 with the help of the SFLC, provides support for non-profit open-source projects.

Essentially, the SFLC, which holds a trademark on "Software Freedom Law Center", is upset the SFC holds a trademark on "Software Freedom Conservancy". This persnickety gripe is a symptom of a deep-running disagreement within the free and open-source software (FOSS) world.

"Both marks incorporate the identical element 'software freedom' at the beginning of the mark, followed by a descriptive noun or compound noun," the SFLC petition, filed in September, argued, claiming that the similar names and services provided by the two organizations are likely to confuse people.

The legal spat could easily be taken as a retelling of the dispute depicted in Monty Python's *Life of Brian* between the People's Front of Judea and its splinter groups – the Judean People's Front, the Judean Popular People's Front, and the Popular Front of Judea.

And it may not be much more than that. To hear SFLC executive director and Columbia Law School professor Eben Moglen tell it, the case stems from three years of being unable to arrange a meeting with SFC's executive director Karen Sandler and SFC president Bradley Kuhn to discuss some issues.

"I have been trying for three years to have a conversation about some differences with some former employees," Moglen told *The Register* in a phone interview, echoing a claim he made in a SFLC blog post about the trademark battle.

The Software Freedom Conservancy disputes that, and calls the trademark claim "bizarre."

Linux kernel community tries to castrate GPL copyright troll

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In response to a request for comment from *The Register*, Sandler via email said: "We don't understand SFLC's reasoning or motives for taking this action. As we wrote in our blog post, the SFLC trademark cancellation filing in the USPTO was a complete surprise. We at Conservancy reiterate that SFLC never raised any complaint to us about our name, trademark, or branding prior to filing their USPTO petition. We encourage SFLC to produce any documentation that shows attempts to raise this issue with us."

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Asked to respond directly to Moglen's claim that the SFC had avoided efforts to arrange a meeting, Sandler said her statement addressed that. Kuhn did not respond to a request for comment.

Moglen said there were limits to what he could say about a pending case. However, he said that any outcome he could imagine that involves the SFC would have the organization "continue to exist and flourish under its existing name."

That sounds as though there is barely any dispute here at all. But the trademark fight appears to be just part of a larger battle over the extent to which the FOSS movement should defend itself and the means by which it should do so.

In other words, are there really any repercussions for violating the GPL?

Split personality

Bruce Perens, one of the founders of the open-source movement and CEO of software-defined radio biz Algoram, told *The Register* in a phone interview that the case reflects a split between the Linux kernel team and other members of the open-source community about GPL license enforcement.

Perens created Busybox, a GPLv2-licensed utility belt for Linux and similar operating systems, that became the subject of a major GPL-related infringement lawsuit, brought by the SFLC in 2007 on behalf of the SFC.

The SFLC sued US telco giant Verizon for allegedly shipping Linux-powered routers that used BusyBox without fully complying with the GPLv2 license. The law center later sued Best Buy, Zyxel, Samsung, and others, again on BusyBox license-breach allegations.

Linus Torvalds, creator of the Linux kernel, made clear his dislike of lawyers and lawsuits in this 2016 mailing list post: "Lawsuits destroy community. They destroy trust. They would destroy all the goodwill we've built up over the years by being nice."

And the focus of Torvalds' ire was Bradley Kuhn, president of the SFC. Torvalds wrote: "I personally think this arguing for lawyering has become a nasty festering disease, and the SFC and Bradley Kuhn has been the Typhoid Mary spreading the disease."

Torvalds may have been thinking of an outbreak of litigation in Germany. A year earlier, in 2015, the SFC helped Linux kernel developer Christoph Hellwig bring a GPL lawsuit against VMware, after three years of supposed negotiation with the company.

In August 2016, the German court hearing the case ruled in VMware's favor, on technical grounds, and an appeal is said to be planned.

At the time, Torvalds described the SFLC and the SFC as if they were cut from the same cloth, characterizing the approach of both organizations as "poison."

As additional background, The Linux Foundation – which counts VMware as a member – stopped funding the SFC in late 2015, and changed its bylaws in early 2016, in what Linux kernel developer Matthew Garrett, a former Free Software Foundation board member, suggested was an effort to keep Karen Sandler from trying to become a Linux Foundation board member.

"The Linux Foundation has historically been less than enthusiastic about GPL enforcement, and the SFC is funding a lawsuit against one of the Foundation's members for violating the terms of the GPL," Garrett wrote last year. "The timing may be coincidental, but it certainly looks like the Linux Foundation was willing to throw out any semblance of community representation just to ensure that there was no risk of someone in favour of GPL enforcement ending up on their board."

Others have levelled similar criticism of The Linux Foundation as well.

The Register asked The Linux Foundation to comment on the SFLC/SFC dispute, but the organization through a spokesperson declined. Presently everyone on The Linux Foundation board has a corporate affiliation.

Perens summarized the situation thus: "The Linux Foundation is like loggers who claim to speak for the trees."

Tips and corrections

39 Comments

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