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Filing date: **03/30/2023**

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

Proceeding no.	92066968
Party	Defendant Software Freedom Conservancy
Correspondence address	JOHN L. WELCH WOLF, GREENFIELD & SACKS, P.C. 600 ATLANTIC AVENUE BOSTON, MA 02210 UNITED STATES Primary email: jlwtrademarks@wolfgreenfield.com 617-646-8000
Submission	Request for Reconsideration of Non-Final Board Order
Filer's name	John L. Welch
Filer's email	jlwtrademarks@wolfgreenfield.com
Signature	/johnlwelch/
Date	03/30/2023
Attachments	92066968 Request for Partial Reconsideration and Requeust for Suspensi on.pdf(1896814 bytes )

	)	
Software Freedom Law Center,	)	
	)	
Petitioner,	)	
	)	Cancellation No.
v.	)	92066968
	)	
Software Freedom Conservancy,	)	
	)	
Respondent.	)	
	)	

Pursuant to Rule 2.127(b) of the Trademark Rules of Practice, Respondent Software Freedom Conservancy (“Conservancy”), by its counsel, respectfully requests reconsideration of that part of the Board’s Order of March 6, 2023 (107 TTABVUE) precluding Conservancy “from filing any further motions regarding the deposition of Ms. Sandler and Mr. Kuhn until such times as [their] depositions are completed.” *Id.* at 10. [Emphasis supplied.]

1

would be seeking a protective order, required the parties to contact the assigned Interlocutory Attorney by telephone to obtain leave to file any further unconsented motions regarding the Bradley [*sic*] and Kuhn depositions.” *Id.* at 7-8. [Emphasis supplied].

By its latest Order, the Board has thus changed its position: it has now completely barred Conservancy from filing a motion for a protective order in connection with these two depositions.

The Board was made aware of the problem of harassment in Conservancy’s opposition (97 TTABVUE, filed on July 5, 2022) to Petitioner’s motion, wherein Conservancy said it would, if necessary, seek a protective order to exclude Petitioner’s principals from the depositions.<sup>1</sup>

Conservancy reserves the right, should the Board grant Petitioner’s motion, to seek a protective order under FRCP 26(c), excluding from the Sandler and Kuhn depositions, Petitioner’s principals, Eben Moglen and Mishi Choudhary. In that protective order motion, Conservancy will detail the campaign of harassment – both physical and psychological – conducted by those two individuals against Karen Sandler and Bradley Kuhn, both of whom are former employees of Petitioner. At this point, suffice it say that the Board of Directors of the Conservancy, late last month, passed the following motion:

In light of abusive behavior from Eben Moglen as a past board member, the board concludes that any meeting between staff and Eben Moglen would create a hostile working environment for staff, and staff are instructed to avoid meetings with Moglen for this reason.

*Id.*, at 10-11.

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<sup>1</sup> One of the two principals, Mishi Choudhary, has left the employ of Petitioner. The remaining principal, Eben Moglen, is still President and Executive Director of Petitioner.

In her Declaration filed on November 14, 2022 (102 TTABVUE) in this proceeding, Ms. Sandler confirmed those statements:

4. I confirm the statement made in Conservancy's opposition to Petitioner's motion that Petitioner's principals have engaged in a "campaign of harassment " – against Bradley M. Kuhn and myself. If there comes an appropriate time, Mr. Kuhn and I will provide details of that campaign of harassment.

5. I also confirm that our staff, including Mr. Kuhn and I, have been instructed by an unanimously approved order of Conservancy's Board of Directors to avoid meetings with Eben Moglen, one of Petitioner's principals. Before this action by our Directors, Mr. Kuhn and I already avoided voluntarily meeting with Eben Moglen in light of his past abusive conduct directed at us and others.

*Id.* at 28.

In preemptively barring Conservancy from filing further motions with respect to the depositions, the Board has effectively ruled on the issue of Mr. Moglen's past conduct—a separate basis for barring Mr. Moglen from the depositions—without, in fact, considering the issue. This is unfair to Conservancy, which should at least be permitted to present evidence and argument about Mr. Moglen's past conduct and why he should be barred from attending the depositions of Mr. Kuhn and Ms. Sandler.

Conservancy takes to heart the Board's concern about piecemeal litigation. Conservancy has been gravely reluctant to set out the details of Mr. Moglen's conduct, on the sincere expectation that it would succeed on the issue of Attorneys Eyes Only. However, now that the Board has issued this new order banning any motion for a protective order, Conservancy is compelled to lay out the facts so that the Board (and if necessary, the Director) can reconsider this latest order.

The attached Declaration of Bradley M. Kuhn (Exhibit A hereto) provides some of the facts on which Conservancy's protective order motion will be founded. Mr. Kuhn briefly sets forth a history of his interactions with Mr. Moglen that compel Conservancy to seek a protective order precluding Mr. Moglen from attending the depositions of Ms. Sandler and Mr. Kuhn.

Attached as Exhibit B hereto is a Declaration of Karen Sandler, which includes a pertinent e-mail message from Matthias Kirschner – President – Free Software Foundation Europe, regarding several of his interactions with Mr. Moglen.

When Conservancy is permitted to file its motion for protective order, it is now prepared to lay out in further detail that factual basis for its motion.

In sum, Conservancy requests that the Board withdraw its order barring Conservancy from filing a motion for a protective order, so that Conservancy may fully present, and the Board may fully consider, the issue of harassment by Mr. Moglen.

Conservancy further requests that this proceeding be suspended so that the Director may consider a Petition to the Director for review of the Board's Orders of October 19, 2022 (101TTABVUE) and March 6, 2023 (107 TTABVUE).

SOFTWARE FREEDOM  
CONSERVANCY



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John L. Welch  
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon Petitioner this 29th day of March, 2023, by emailing a copy thereof to its counsel at sean@mcmahonpllc.com:

SEAN P MCMAHON, ESQ.  
SEAN P. MCMAHON, PLLC  
209 GARTH ROAD 11  
SCARSDALE, NY 10583



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John L. Welch

# EXHIBIT A

**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 PROTECTIVE ORDER**

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 Treasurer, Policy Fellow, and member of the Board of Directors of the Software Freedom Conservancy (“Conservancy”), the Respondent in this matter. I have held the Board seat from shortly after Conservancy's inception (in 2006) to the present, and have held various other positions in the organization.
3. Separately, I was employed in various roles at the Software Freedom Law Center (“SFLC”), the Petitioner in this matter, from March 2005 until summer 2010.



4. I met Eben Moglen ("Moglen"), the founder of SFLC, in 1999 when he was on the Board of Directors of, and pro-bono general counsel to, the Free Software Foundation ("FSF").
5. I had the opportunity during my time at the FSF to work very closely with Moglen on an almost-daily basis. At the time, I also became socially friendly with Moglen. I believed at the time (in retrospect – erroneously) that Moglen was mentoring me.
6. Having never been mentored before by a professional colleague, I did not have a basis for comparison at the time. In retrospect, I now see that many of Moglen's behaviors were inappropriate in a professional setting. His behavior toward me at the FSF was often questionable, but admittedly did not begin to cross lines until later.
7. For example, David Turner, who was an employee at the FSF contemporaneous with Moglen's and my work there, told me that Moglen had said abusive and inappropriate things to him while he was an FSF employee. I dismissed this as exaggerated at the time.
8. In retrospect, I realize that it was typical of Moglen's behavior that he would act and communicate very differently with different people – such that individuals (like Turner and myself during our FSF work) would have very different experiences.
9. In about 2006, about a year after I began working at the SFLC, Moglen's behavior to me began to change. Initially, the changes were subtle and constituted mostly microaggressions. As time continued, Moglen's behavior became increasingly abusive and eventually escalated into physical intimidation. This began approximately one year after I began the job where I reported directly to Moglen as my supervisor for my work at SFLC.
10. For example, on Thursday, April 26, 2006, after checking with Moglen's personal assistant and verifying that Moglen was not likely to need remote network access, and verifying with the rest of the staff that a short outage in service would not be problematic, I briefly took down (for 17 minutes) some computer services at SFLC that I was in charge of, in order to make needed repairs.

11. I immediately received a phone call from Moglen in which he yelled loudly and screamed at me for failing to do my job properly, insulted my technological skill, and made various other abusive statements.
12. Aghast, I wrote an email in reply, apologizing to him personally. He replied by e-mail that I was “mistaken in [my] assessment of the situation”. Even today, looking at that email record, it seems *as if* Moglen was completely friendly and nice as an employer, because Moglen was often very careful to say abusive things only verbally and then contradict them with a completely different narrative in a written record.
13. I recall another incident where most of the SFLC staff had gone to a going-away party for a departing employee/intern. Moglen was not on-site at the SFLC offices that day and did not attend the party, but was aware that it was going on.
14. Moglen phoned me during the party and insisted that I had incorrectly configured the VPN (Virtual Private Network) for our systems. I left the restaurant (out onto the street) and I attempted to calmly explain that he had made an error in his use of it. I informed Moglen that I was at the event, and asked if it really was urgent. I informed him it was difficult to hear him on the busy NYC street and I had the phone directly pressed against my ear to hear him. In response, Moglen began screaming at the loudest possible volume – yelling that I had failed to do my job adequately and that perhaps I was in the wrong job if I couldn't make the VPN work for him. I dropped the phone. I had pain and difficulty hearing out of that ear for a few days thereafter.
15. I ran back to the SFLC office a few blocks away and attempted to debug the VPN problem. I returned Moglen's call at that point, ready to verify that I saw no problems on the server. Moglen then was suddenly in a jovial mood and acted as if I'd done a good job, even though only 10 minutes before he was screaming into my ear at how bad a job I'd done.
16. In September 2007, the SFLC had a financial crisis. Based on my years of non-profit budgeting, I suggested that we draw up a formal budget for the organization (as that had not been done in its first few years). Moglen encouraged me and Daniel Ravicher (then

SFLC's Legal Director) to do so. I spent the week of September 10, 2007 working closely with Ravicher building the budget that Moglen had requested.

17. Moglen did not comment on the budget when we submitted it. Instead, he asked me to lunch offsite of the office. As soon as the food arrived, he began to loudly berate me for preparing the budget at all. I recall that he insisted that I had no right to produce this budget (when just a week before he had explicitly asked me and Ravicher to prepare it). Moglen claimed that my preparation of that budget, which was shared only with Moglen, Ravicher and myself, constituted an attempt to usurp his authority and that I did not have the background knowledge, experience, or permission to prepare such a document.
18. At that time, after discussions with my therapist, I began to seriously consider that Moglen was engaged in (at least toward me) a strategy known as “gaslighting” – a form of psychological manipulation in which the abuser attempts to sow self-doubt and confusion in their victim's mind.
19. At this point, I was in severe psychological distress over Moglen's continued abusive behavior toward me. Because I was new at the time to the process of gaslighting, I became confused and spent much of my time unsure who to trust or who to believe, since Moglen would often tell me things that I knew to be false, but was nonetheless quite persuasive – causing me to question reality.
20. After that time, I did eventually begin to point out on many occasions to Moglen when I felt his behavior was inappropriate. I recall that I even directly accused him of gaslighting behavior at the time. Unfortunately, this led to escalation of his abusive behavior toward me.
21. I recall an incident circa late 2009 or early 2010. I had stayed late at the office, and Moglen was hosting a visitor from the Icelandic FOSS community at the office. Moglen did not realize I was still on the other side of the offices and could overhear him and his colleague from Iceland talking in the kitchen.

22. Moglen and his colleague were discussing cleaning up the kitchen, and then Moglen began to talk about cockroaches. To my surprise, Moglen began to talk in great detail about personal facts, that I'd shared with him in confidence, regarding my lifelong cockroach phobia. I was aghast that Moglen was sharing such personal information about me with a third-party. Furthermore, Moglen's comments were denigrating and inappropriately harsh about my phobia.
23. Moglen reacted with complete surprise when I then left my office and walked past him and his colleague to leave. It was clear from context that he knew he'd been talking about me in an inappropriate manner and had been "caught" in the act of doing so.
24. On May 3, 2010, I made a comment on a corporate blog written by an employee of a for-profit third-party that was not a client of the SFLC, encouraging the for-profit company to cease seeking patents on software. Opposition to patents on software is a known stance in the Free and Open Source Software ("FOSS") community and Moglen himself had often spoken out against software patents. I believed it to be within SFLC's policy goals to criticize the patenting of software. Nevertheless, I made the post in my own name, linked to my own personal website for identification, and did not represent nor identify myself as an SFLC employee.
25. On May 4, 2010, Moglen apparently noticed this comment. At approximately 3:40 PM, Moglen rushed into my office at SFLC. My office was situated such that the desk was against the far wall away from the door, so I turned my chair around facing open space in the office to respond to Moglen's entrance.
26. Moglen began yelling more and more loudly, apparently angry that I had posted that comment. I attempted to respond, suggesting that while the policy position was correct, my response was arguably not tactful, I offered to post a follow up comment clarifying. Moglen, still yelling loudly, approached where I was sitting. As there was no desk or other furniture between us, Moglen was able to approach me so closely (him standing while I still sat) that our knees almost touched.

27. Since Moglen had come so close, I stood up and began repeating: "You do not have the right to stand this close to me. Please step back away from me. I am not comfortable with you standing so close to me." Moglen, his face directly in mine at this point, continued yelling. I recall that some of his saliva actually hit my face at one point. I recall he said something to the effect that he had every right to stand and speak anywhere he wanted since these offices were his.
28. I backed away, pushing my chair further back, continuing to repeat that he should not approach me closer, but he proceeded to approach closer and then had me cornered against my desk in the far side of the room. I was unable to move away without making physical contact with him, and I feared that even if I brushed against him, that he would begin a direct physical battery against me. I had long feared for my psychological safety in the presence of Moglen's abusive behavior, but in this moment, I also feared for my physical safety.
29. Indeed, I recalled at this time a story Moglen had told about how once, in the Netherlands, he'd committed physical battery against a Dutch motorist who had inadvertently collided with his bicycle. I recalled the glee that I observed in Moglen's eyes when he'd told that story from years ago, and therefore feared that he would gleefully engage in physical violence against me.
30. As a lifelong pacifist, I abhor physical violence and would not respond in kind if Moglen began a physical battery, and as such I feared that my choices would quickly become either compromising of my lifelong principles or simply having to take a beating undefended. I was determined to avoid the situation entirely.
31. Since I was scheduled on the SFLC calendar to depart at 4PM anyway, I turned away to face toward my desk, and began packing my bag to leave. Moglen still stood directly behind me such that I could not move in any direction other than to reach my arms to collect my personal items on my desk and place them in my bag (which was fortunately in arms' reach).

32. Once my bag was packed, I turned around – with not even enough space between me and Moglen to put my backpack on – I held my backpack by a strap at my side. I told Moglen that I was scheduled to leave and again did not consent to him standing that close to me, and that I would like to leave.
33. Moglen said words to the effect that I was not permitted to leave until he'd finished saying what he wanted to say. He continued to yell loudly. Seeing the situation beginning to escalate again, I decided to turn back toward my desk, climb up onto my desk, and quickly scurry around the return of the desk, which got me nearly to the door. I did so with celerity sufficient that Moglen couldn't react quickly enough to block me. Now no longer blocked, I ran quickly out the office door, out of the office suite and toward the elevators.
34. Moglen gave chase, and I shouted that I was scheduled to leave on the calendar, that I would be leaving the office for the day, and I insisted that Moglen not follow me to the elevators. When I reached the elevators, I pressed the call button, and turned to see that Moglen was again extremely close to me, immediately at my side, and he began to yell again.
35. Fearing for my physical and psychological safety, I realized that I was now entirely alone with Moglen outside of the office space. Knowing that the elevators typically took about a minute or two to arrive, I decided to reenter the SFLC office space quickly through the other entrance, and run to a common area where other staffers would likely be present. I reasoned that I would be safer from physical violence if other staffers were present.
36. I ran into the office kitchen, and at that point the entire staff – presumably having heard Moglen's sustained yelling and my running – had assembled there. Moglen ran in just a moment behind me, still yelling words to the effect that I had no right to leave the office until he'd finished saying (in actuality, yelling) what he wanted to say to me. Moglen also at this time made reference that I would not be able to keep my job if I departed without his consent.

37. I responded insisting that since I'd scheduled my departure at 4PM, and it was now past 4PM, I had every right to leave without reprisal. Moglen communicated that he was not familiar with the calendar that I mentioned and insisted that I stay. At that point, Karen Sandler joined the conversation and made verbal efforts to deescalate the situation by informing Moglen that he had previously approved the use of the calendar for employees to schedule when they would be in (and out of) the office.
38. I did not hear the end of the conversation, as at that point, I thought it likely that Moglen would no longer chase me. I walked very quickly to the elevators and left for the day.
39. The following afternoon, I sent an email to Moglen both offering a remedy to the primary situation of his concern (the blog post comment), and stated that I felt his behavior was inappropriate. That email is included as Exhibit 1.
40. Moglen replied by email on Thursday, May 6, 2010, claiming that the interaction was merely "unpleasant". (Moglen's email is provided as Exhibit 2.) I replied within one hour stating that in my opinion "You [Moglen] acted in a physically aggressive manner and that is actually well beyond merely inappropriate. You moved too close to me in a physically aggressive posture and refused to back away despite my repeated requests that you do so. Regardless of whatever you feel about how my personal statements have made things difficult for anyone, there is no reason nor justification to take physically aggressive movements toward an employee, and furthermore ignore that employee's repeated requests that you move out of their physical personal space (you put your face within an inch of mine and I asked you multiple times to move back). You've created an environment where I am now left to feel physically unsafe in the workplace." That email is provided as Exhibit 3.
41. For context, the remaining emails on this topic thread that followed are included in Exhibits 4 and 5. I received no reply whatsoever to Exhibit 5, and, regarding Moglen's claim in Exhibit 4 that my "complaint concerning your treatment will be dealt with in due course" received absolutely no response – other than my dismissal from SFLC employment.

42. During the week following the incident, I also researched whether Moglen's actions were a crime. At the time, I was focused on the assault statutes I did not realize that New York had a menacing statute under which I could file a police report. I did not learn about the menacing statute until the statute of limitations on the incident had run out.
43. I also began making plans at this point to leave employment at SFLC. I was unable to do so quickly due to the expense of living in New York City at the time. Ultimately, as mentioned above, Moglen fired me about five weeks after the incident.
44. After the incident, I refused to enter the building without other employees present, and I kept my office door locked when there, and asked that I not be required to meet with Moglen. I was informed that regular, face-to-face meetings with Moglen was now a non-negotiable requirement of my job. I regrettably compromised at the time (for the sake of keeping my job a bit longer) that I would meet with Moglen, but only with another employee present.
45. As discussed in my prior declarations and exhibits in support of our Summary Judgment motions, I have unfortunately, since my termination at SFLC, had various interactions with Moglen in our professional community – specifically at the conferences and events that were discussed in those filings.
46. There are many instances of aggressive and psychologically abusive behavior that Moglen engaged in toward me in these later situations. For brevity, I describe only the two most egregious occurrences.
47. On March 8, 2017, my mother was murdered. Because it was covered substantially in the press, it became common knowledge in the software freedom community that this had occurred.
48. On March 25, 2017, I attended my first software freedom event (The FSF's "LibrePlanet") after my mother's murder. At this conference, I attended Moglen's talk. While I would have preferred not to, because SFLC had already begun efforts to oppose Conservancy's political and policy positions at that time, it was important we know what was being said by SFLC.



49. About 327 seconds into the talk, Moglen began to tell a story about his own mother. It included the sentence: “When a mother lives long enough and a son lives long enough ... little misunderstandings get straightened out”. Moglen made a point of making direct eye contact with me when he said the words: “When a mother lives long enough”. A recording of this talk is available online at [https://media.libreplanet.org/mgoblin\\_media/media\\_entries/1519/123\\_5\\_eben.webm#t=327](https://media.libreplanet.org/mgoblin_media/media_entries/1519/123_5_eben.webm#t=327)
50. Moglen is very good at subtle methods of “getting to someone”. He often used to frequently tell me and other SFLC staff stories of his best verbal attacks that were subtle but effective. I recall one of his favorite phrases was: “I got it done by using my words and leaving no fingerprints at the scene”. Based on the fact that Moglen had previously bragged of that skill, I am quite sure that he phrased this particular story about his own mother in this particular way merely to continue his verbal abuse toward me in a way that would be easy to deny later.
51. During the week of April 8, 2019 (after this Cancellation Proceeding had been ongoing for two years), I attend the FSF Europe's Legal and Licensing Workshop in Barcelona, Spain. I stayed at the hotel Fairmont Rey Juan Carlos I for this event.
52. Unbeknownst to me, Moglen was staying at the same hotel. I discovered this because very early on one of the mornings, I was eating at the buffet breakfast and Moglen entered the restaurant.
53. I saw him approach from the elevator and watched carefully, as I fear for both my physical and psychological safety any time Moglen is present. I saw Moglen check-in as a breakfast guest with the restaurant host. The restaurant was almost entirely empty at the early hour (approximately 30-40 tables were available across an expansive space). Nevertheless, I heard Moglen say loudly to the host: “There is no need to give me another table; I can sit here with my dear friend” – expressing “dear friend” in an unmistakably sardonic tone.

54. The host followed with a menu as Moglen approached me, and I said clearly and loudly: "I do not want you to sit here, Eben; I will not sit with you. Please sit far away from me; there are many tables available", and I gestured to the mostly empty restaurant.
55. Moglen grabbed the empty chair at the two-top where I was sitting, and began to sit down saying: "But, my dear man, here you sit and appear as a paragon of mental health now. What reason could there possibly be that you do not want to sit with me?"
56. I stood up, and moved two or three tables to the right, and said to the host: "¡Por favor, ayúdame – no quiero que este hombre sientense conmigo!" Sadly, the host gave me a defeated look and walked away, while Moglen was moving his jacket to put on the empty chair at the new table.
57. Since breakfast was primarily a buffet, Moglen then walked to the buffet. I quickly finished the remaining items on my plate, and decided my best option was to, again, run away as quickly as possible. I jettisoned my plan to make a second trip to the buffet and hurried quickly back to my hotel room.
58. I have been in regular therapy for trauma, post-traumatic stress disorder (PTSD), and anxiety since my time at SFLC. While my experiences with Moglen are not the sole cause of these conditions, my experiences with Moglen have exacerbated and worsened them.
59. In particular, since during the early 2000s I would have considered him a friend, Moglen was aware of my trauma and PTSD. Given his awareness that I was psychologically vulnerable to begin with, in my opinion, makes his behavior worse. I believe that he engages in these behaviors precisely because he has personal information about my mental health.
60. While it is extremely difficult for me to recount all this material publicly and admit that I have been seriously traumatized by Moglen and suffer PTSD in part because of his actions, the TTAB has left me no choice since it has insisted that I appear for a deposition where Moglen will be present.

61. I've discussed (throughout my treatment and recently as well) with my current therapist about my conditions and what is best for my mental health. Upon recommendation of my therapist, I have asked Conservancy's attorneys to file for a protective order that would prohibit Moglen from being present, even in part, and/or even virtually, for any deposition in this matter.
62. I and my therapist both believe that even partial presence, or a virtual presence whereby Moglen would hear my deposition in real time and be able to communicate via notes or backchannel to his attorney, would be re-traumatizing for me.
63. My therapist is prepared to provide a letter attesting to the points in paragraphs 61 and 62 – in support of a future motion for protective order in this matter.

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

A handwritten signature in blue ink, reading "Bradley M. Kuhn", is written over a horizontal line.

Dated: March 28, 2023

# Exhibit

1

Date: Wed, 05 May 2010 14:34:02 -0400  
To: eben@softwarefreedom.org  
From: Bradley M. Kuhn <bkuhn@softwarefreedom.org>  
Subject: **is an apology to Rob valuable at this point?**

I was not able to finish our substantive discussion yesterday, because I found your treatment of me in the latter half of the conversation alarming and unsettling. Before you escalated the situation in an inappropriate way, I was going to offer to send an apology to Rob Tiller regarding the comments I made personally on my own behalf on his blog.

Despite yesterday's events, I would still actually like to send Rob an email apology, as I do believe I personally owe Rob an apology. However, I will only do so if it is something you think would be helpful. I don't want to inadvertently cause further problems. In the apology, I would also clarify that my statements aren't SFLC's views.

Please let me know by email if you'd like me to apologize to Rob.

--

-- bkuhn

Exhibit

2

Date: Thu, 6 May 2010 07:57:20 -0400  
To: bkuhn@softwarefreedom.org  
From: Eben Moglen <eben@softwarefreedom.org>  
Subject: **Re: is an apology to Rob valuable at this point?**

I don't see how graciousness can do any harm at any time, though the concept of apologizing to Tiller seems irrelevant to me. Rob would respond by saying that he has no problem with your statements and that he appreciates your engagement. That would leave a nice clean surface on everything, and it wouldn't change the political realities in the slightest.

I don't think there'd be any point in sending an apology to Michael Cunningham, who spent twenty minutes with me on the phone Tuesday evening, which I could well have wished to avoid.

Please don't mistake what's going on for a matter of Tiller's hurt feelings. What he says to you would be genuine, so far as that goes: he wasn't personally bothered in the least. Your head is being requested, in the most genteel and unassertive sort of way, with a "we understand that there are passionate feelings in the community, and we know he has great value and so on, and we deeply condole with you in the sad necessity that you find you are under and we've left the pistol on the table in the library" tone of voice. It's gone beyond Red Hat now; I had it from Canonical yesterday morning--who are still smarting from your antepenultimate unjustified diplomatic row, and who view this Red Hat situation as vindication of their position--and I have very high confidence I'll hear it from one or two more quarters before week's end.

You could have avoided almost all of this, including most certainly the unpleasant interactions with me, by making a dozen words' worth of clear distinction between the expression of your personal opinion and your role as an employee of SFLC. Your omission, post after post, of the slightest such distinction was absolutely unmistakable. Are you going to apologize to Rob Tiller for not making clear that your opinions were personal? You owe apologies to the people whose livelihood you unnecessarily endangered, and to the leader you have once again dragged into a situation where he is compelled to take public responsibility for your bad choices even after he has tried to prevent you from making them. Tiller should be the least of your regrets.

Exhibit

3



Date: Thu, 06 May 2010 08:58:28 -0400  
To: Eben Moglen <eben@softwarefreedom.org>  
From: Bradley M. Kuhn <bkuhn@softwarefreedom.org>  
Subject: **Re: is an apology to Rob valuable at this point?**

Eben Moglen wrote at 07:57 (EDT):

> Are you going to apologize to Rob Tiller for not making clear that  
> your opinions were personal?

Yes, I'm glad to do that as well.

You said there is no harming in sending an apology to Rob, so I will do so, and include a point about the opinions being my own.

> Your omission, post after post, of the slightest such distinction was  
> absolutely unmistakable.

To be clear, it was not omitted. The posts were made from my own domain and my own email address, with the URL link being made back to my personal website. I made no representation that I spoke for SFLC; if people assumed that despite my name being clearly linked to my personal website, I'm sorry they were confused and I would have of course added an even more explicit clarification if I thought people would be confused enough to think that bkuhn@ebb.org and <http://ebb.org/bkuhn/> are SFLC identifiers.

If it's useful, I'm also glad to post on the same thread now to make a further clarification of the statements being my own, so that the clarification is for posterity. Would you like me do so? I would have likely offered this as well on Tuesday had you not escalate the situation in the inappropriate way, making it impossible for a useful conversation to continue.

> You could have avoided almost all of this, including most certainly  
> the unpleasant interactions with me,

They were beyond "unpleasant". You acted in a physically aggressive manner and that is actually well beyond merely inappropriate. You moved too close to me in a physically aggressive posture and refused to back away despite my repeated requests that you do so.

Regardless of whatever you feel about how my personal statements have made things difficult for anyone, there is no reason nor justification to take physically aggressive movements toward an employee, and furthermore ignore that employee's repeated requests that you move out of their physical personal space (you put your face within an inch of mine and I asked you multiple times to move back). You've created an environment where I am now left to feel physically unsafe in the workplace.

Finally, making inappropriate analogies regarding "pistols" with respect to "my head is being requested" (presumably an analogy to decapitation) only leaves me more worried that physical safety isn't something I can

count on at SFLC.

--

-- bkuhn

# Exhibit

4

Date: Thu, 6 May 2010 10:40:50 -0400  
To: bkuhn@softwarefreedom.org  
From: Eben Moglen <eben@softwarefreedom.org>  
Subject: **Re: is an apology to Rob valuable at this point?**

My request, as your supervisor, is that you make no public statements to anyone except in the course of your assigned work, under supervision, after appropriate consultation. In particular, I request that you refrain until further notice from all contact with executives or lawyers for donor organizations, and from public comment on their activities, unless prior approval is sought and obtained from either Daniel or me.

As regards Tiller, you have apparently misunderstood me. I have not endorsed an "apology" to him, which I believe is completely unnecessary and irrelevant, having nothing to do whatever with the actual nature of your misbehavior, or with the persons to whom you ought to be apologizing. I have explained why. I have not forbidden such a contact, but I consider it pointless and therefore unwise. I strongly advise you that your best course at present is humility and silence.

Your excuses concerning the absence of disclaimer have been noted. They are quite inadequate in my view. Further disciplinary action will follow as and when it serves SFLC's interest in my opinion. Your complaint concerning your treatment will be dealt with in due course. For now, we have nothing further to discuss.

# Exhibit

5

Date: Thu, 06 May 2010 20:15:54 -0400  
To: Eben Moglen <eben@softwarefreedom.org>  
From: Bradley M. Kuhn <bkuhn@softwarefreedom.org>  
Subject: regarding your request

Eben Moglen wrote at 10:40 (EDT):

> My request, as your supervisor, is that you make no public statements  
> to anyone except in the course of your assigned work, under  
> supervision, after appropriate consultation. In particular, I request  
> that you refrain until further notice from all contact with executives  
> or lawyers for donor organizations, and from public comment on their  
> activities, unless prior approval is sought and obtained from either  
> Daniel or me.

I will try my best to comply with the spirit of this request, but, as written, it is so broad that it would be impossible to comply with the exact letter. In an attempt to comply, I have already implemented the following:

- \* Added very clear disclaimers to all my email .sig's, and added appropriate X-Disclaimer: headers to all my outgoing email, except that which is from your domain, @softwarefreedom.org, which I will never use in a manner forbidden by the exact letter of your request.
- \* I plan to include similar disclaimers attached as closely as possible to all statements that I make anywhere on the Internet.
- \* I will never be posting on opensource.com again.

Meanwhile, as you are aware, separate from my day job with SFLC, I spend between 20-35 hours per week as a volunteer on a variety of projects and for a variety of organizations throughout the Free Software community. These include, but are not limited to, a directorship with the FSF, the GNOME Advisory Board representative for the FSF, a GNOME Foundation member, a charter member of the OSI, a BusyBox developer, a Debian Developer, a GCC contributor, and a Parrot developer. Nearly all of my volunteer roles require some component of public statements, either because the organization in question asks me to make a public statement, and/or because nearly all activity in the Free Software community is conducted on public fora such as mailing lists, blogs, bug tracking systems, public code repositories, and public Wikis. Asking me to make no public statements except pre-approved statements would effectively require that I cease nearly all volunteer activity that I actively do each week.

As for more general public statement on activities in the Free Software community, I have maintained a writings page (now a blog) on my personal website since 1998, where I have always written about all sorts of things related to Free Software and which often includes comments about activities of many software companies, some of whom are your donors. Based on your previous concerns, I had already added a very clear disclaimer to my website. Assuming that Lysandra has been properly

instructed to cease sending URLs from ebb.org to journalists (which she did before despite my protests that she not do so, which was the root cause of one of the incidents of your concern), I believe that the disclaimer is adequate to solve any confusion regarding statements made there, and it addresses the substance, if not the exact letter, of your request.

I am also an avid user of the identi.ca/status.net systems in my personal time. The discussions there are often about the Free Software community, and many participants on the status.net network are employees for some organizations that donate to you; some even hold roles in the capacities of your particular concern. I simply cannot clear every 140 character utterance made on my own time through my employer, nor do I feel it is a reasonable request to ask that I do so. I have, however, updated my 140-character-max profile on identi.ca to be only a disclaimer, and I plan to make a fresh dent of that same 140-char disclaimer statement in my identi.ca stream once per week (and I have made the first of those already).

Finally, many of my personal friends are in the class of people with whom compliance with your request would explicitly forbid communication. Indeed, at least a few of them have even been my personal friends since before SFLC even existed. Asking me to refrain from all contact with personal friends is just not a request with which I can possibly comply.

> Your excuses concerning the absence of disclaimer have been noted.  
> They are quite inadequate in my view.

I am sorry that you find my explanations inadequate. My original list, BTW, was not exhaustive. I neglected to mention that the entirety of the opensource.com website has the following statement at the bottom of every single page:

"The opinions expressed on this website are those of each author, not of the author's employer."

I don't see how that statement could be considered inadequate as a clear disclaimer that my statements were not on behalf of SFLC, especially when combined with the additional care I took, already explained in the previous email.

--

-- bkuhn

# EXHIBIT B



**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		Cancellation No. 92066968
Petitioner,		
v.		
Software Freedom Conservancy		
Registrant.		

**DECLARATION OF KAREN M. SANDLER**  
**IN SUPPORT OF RESPONDENT'S MOTION FOR PROTECTIVE ORDER**

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 herein are made on my personal knowledge.
2. I am currently the President and Executive Director of the Software Freedom Conservancy ("Conservancy"), the Respondent in this matter. I have held the position of Executive Director since March 2014. I have held the position of President since September 2019.
3. Separately, I was employed in various roles at the Software Freedom Law Center ("SFLC"), the Petitioner in this matter, from 2005 until 2011. I was initially hired as Counsel, and was named General Counsel in 2010. After my employment ended, I

continued to serve as SFLC's 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 2012. I remained listed as pro bono Of Counsel to SFLC until 2014.

4. I am limited in what I can attest to regarding this matter during my time as an SFLC employee since, as General Counsel, SFLC was a client.
5. In this declaration, I have focused on events that occurred after I ceased my work for SFLC and ceased being their attorney.
6. As I mentioned in a previous declaration in this matter, after I joined Conservancy, Moglen started accusing me and Bradley Kuhn, then 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 properly or correctly republished portions of copyrighted content he and Choudhary made available under a Creative Commons license.
7. Moglen accused us of violating the Creative Commons license and of committing plagiarism, and called me by phone to yell at me and threaten me. This was a specious attack, clearly retaliatory and in my view harassment. Nevertheless, we dutifully worked with Creative Commons license experts, verified that our republication of the work was in full compliance, and even went above and beyond to do additional attributions to give abundant credit to Moglen and his staff for their work on the portions they contributed to. The email message from Moglen to me dated May 18, 2016 (attached as Exhibit 1 hereto is] is an example of his personal attacks on Bradley Kuhn and myself. A few months after these events (in October 2016), Moglen publicly claimed that Kuhn and I were "on a jihad for Free Software" (See Exhibit 2 hereto).
8. It seems evident to me that the specious claim of plagiarism, insisting that Kuhn and I were *personally* liable for some tort claim, and to publicly claim that we are on a "jihad" was intended to harass both of us personally.
9. Additionally, I recall that Moglen had twice requested to meet with me at the last minute and that on one occasion I had been very sick and the other I had a pre-existing

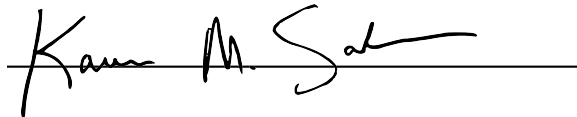
conflict. I recall that my declining to meet with Moglen for a social meeting sparked an escalation in these attacks and. I began to feel that I should no longer meet with Moglen in person – despite his demands that I do. I had previously witnessed many occasions where Moglen was verbally abusive to others in in-person meetings, and given the tenor of his emails on this matter as well as his yelling and insulting me on the phone, I expected that he would be verbally abusive to me personally if I were to meet with him in person.

10. I instructed our staff at the time, and have continued to instruct them, that as a matter of safety of our staff, that no employee should be required to meet, see, or interact with Moglen in person. I believe his repeated verbally abusive behavior against those he views as adversarial is egregious and dangerous for the psychological health of me and our employees at Conservancy.
11. In 2019, I participated in a panel with other industry professionals. While I was speaking on the panel, Moglen interrupted me from his position in the front of the audience and berated me about a topic that was not the subject of the panel. I later learned that this incident led to a complaint being filed by other individuals (though I do not know their identity).
12. In 2021, I became aware that Moglen had also harassed Matthias Kirschner of the Free Software Foundation Europe (“FSFE”) in April 2019. Exhibit 1 hereto is a copy of an email that I recently received from Kirschner describing these events.
13. Based on these and other events, I have asked Conservancy's attorneys to file for a protective order that would prohibit Moglen from being present, even in part, even virtually, for any deposition in this matter.

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: March 29, 2023

A handwritten signature in black ink, appearing to read "Karen M. Sandler", is written over a horizontal line.

# EXHIBIT 1

Date: Wed, 18 May 2016 15:58:51 -0500  
To: Karen Sandler <karen@sfconservancy.org>  
From: Eben Moglen <moglen@columbia.edu>  
Cc: Directors <directors@sfconservancy.org>,  
directors@fsf.org, Diane Peters <diane@creativecommons.org>,  
Philippe Aigrain <pa@laquadrature.net>,  
mishi@softwarefreedom.org, John Sullivan <johns@fsf.org>,  
Tony Sebro <tony@sfconservancy.org>  
**Subject: Re: SFLC's continued escalation of copyleft.org allegations**

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 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

## 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.”

## SEARCH

DuckDuckGo Site Search

Go

“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.

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# EXHIBIT 3

Subject **Conversation with Eben Moglen**  
From Matthias Kirschner <mk@fsfe.org>  
To Karen M. Sandler <karen@sfconservancy.org>  
Date 2023-03-24 11:10

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Dear Karen,

As I mentioned to you some time ago, I had many conversations over the years with Eben Moglen, in which I felt threatened by him.

In April 2019 I had a meeting with Eben Moglen in Barcelona/Spain, which was about possible ways of working together for software freedom; despite previous unpleasant experiences. At one point, which was about how the Free Software Foundation Europe has handled a former Code of Conduct complaint about another person, Eben told me "if you want to shoot someone in the head, you have to do it the right way" and continue to explain me "how I [Eben] am shooting a bullet in Bradley's and Karen's head...".

On 30 September 2019 I also felt threatened by him in a phone call in which he wanted to receive the full Code of Conduct complaint and evidence which was filed against him towards the Free Software Foundation Europe. He assumed someone from Software Freedom Conservancy filed that (which was not the case). In this call he mentioned private information about Bradley's childhood and called him a psycho. Eben was also saying "do you think that those two clowns who worked for me [Bradely + Karen] are a competition for me?".

Best regards,  
Matthias

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