

ACT, Perens Continue to Spar Over GPLv3

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The accusations and counteraccusations continue to fly between ACT legal counsel Richard Wilder and open-source luminary Bruce Perens over whether the third draft of the GNU General Public License Version 3 creates genuine legal risks for the drafters and potential users.

The brouhaha started after Wilder, an attorney at Sidley Austin and the intellectual property counsel for ACT, wrote an analysis titled "GPLv3: The Legal Risks of Overreaching for Third Party Patent Rights" , which was published on ACT's Web site April 4.

In that paper, Wilder said the third discussion draft of GPLv3, particularly the provisions designed to block patent cooperation agreements like the one between Novell and Microsoft, could potentially expose those developing and using the license to legal risk.

Perens responded April 9 by dismissing ACT as nothing more than Microsoft's lobbying front, saying that GPL software is displacing Microsoft enough to have them concerned, and is doing this for customers who were important to them.

"A lawyer's job is to scare the other side if they can - because they know it's cheaper than winning a case in court. They are going to paint as negative a picture as they can," Perens said.

In an April 10 blog posting titled "Perens Invokes the 'Nuh Uh!' Defense, Calls Us Names", Wilder said that Perens' rebuttal of his analysis "can best be summed up as 'Nuh Uh!' and 'they're ugly because they have Microsoft as a member.'"

He also responds to Perens' comments that IBM, Hewlett-Packard, Red Hat and a couple dozen corporate attorneys have seats on the GPL 3 committees and are constantly evaluating any potential legal risk introduced by the drafts.

"While this is nice to know, Perens should forward his analyses to them so that they can actually read them before commenting on the validity of the arguments," he said.

Wilder goes on to say that: "To be honest, Mr. Perens has raised very little I can respond to. He only dismisses the points I made in my paper as 'nothing more than words' or 'bogus', but with little analysis," he said.

Wilder said that Perens' answers simply do not address the main risk posed by GPLv3, as stated in the analysis paper, that GPLv3 might be interpreted as the FSF (Free Software Foundation) tortiously interfering with a legal contract between two parties concerning intellectual property issues between them, he said.

"Mr. Perens cites the case of Daniel Wallace, which was based on a predatory pricing theory under another version of the GPL and not a group boycott theory as I was suggesting in respect of the GPLv3," Wilder said.

For his part, Perens told eWEEK that while Wilder does not feel that the Daniel Wallace case is germane, the most important part of that case is not Wallace's poorly constructed legal theory, but rather the judge's comments on how GPLv2 promotes competition and thus is not a matter for anti-trust law.

"I have to assume that the judge read the entirety of GPLv2, including its patent provisions. GPLv3's patent

language is more verbose, but similar in intent. I raise the same issues with GPL2 in response to Mr. Wilder's criticism of GPL3 to illustrate that the issues Mr. Wilder has problems with are also part of software licensing that is accepted by the world's largest computer manufacturers and customers today, and has survived court tests," Perens said.

"What I find laughable about - Wilder's - group boycott theory is that people who provide their work to the world at no charge could, in Mr. Wilder's fantasy, be successfully sued for refusing to give their work away in a form that furthers Microsoft's goals," Perens said.

Wilder also noted that he finds it strange that Perens countered his arguments by - in part - referring to GPLv2.

"It was clearly my intent to address issues that arise under GPLv3," Wilder said. "Hopefully, Mr. Perens can share my papers with the FSF legal team so that we can find ways to improve the language and avoid these issues. These are important issues that deserve a full analysis and airing."

Perens fired back, telling eWEEK that he had tried to find an attorney willing to engage with Wilder after reading his paper, but "nobody's interested."

He also questioned Wilder's sincerity, noting that he could have participated on the GPLv3 committees or contributed to the GPLv3 feedback system if he wanted to solve problems with GPLv3.

"His employer is widely known as a Microsoft shill; his goal is not to help but to spread fear, uncertainty and doubt about GPLv3," Perens concluded.

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