

Re: GNU License Question, On Change of Code

Source: <http://linux.derkeiler.com/Newsgroups/comp.os.linux.development.system/2005-02/0059.html>

From: David Schwartz (davids_at_webmaster.com)

Date: 02/03/05

Date: Thu, 3 Feb 2005 02:06:10 -0800

"Peter T. Breuer" <ptb@lab.it.uc3m.es> wrote in message
news:d349d2-31n.ln1@news.it.uc3m.es...

> *David Schwartz <davids@webmaster.com> wrote:*

>> *In my example, you gave someone a copy of some information with no
>> restrictions. I maintain that this makes the information legally public.*

> *INFORMATION now may be publicised, but not what you gave them – that's
> copyright and may not be published without the authors permission. And
> there is no really no "information" in source code itself! – it's not a
> newsflash, you know. The information lies behind the code, and the code
> is a derivate of that. So whatever INFORMATION you published would be
> your guesswork about something else, and you may or may not have leeway
> to publish it depending on many things (is it libellous? True?).*

Wow, aren't you clever! Damn, I'm so impressed! You zeroed in on my use
of the word "information" and used that to ignore the entire substance of
what I said! Wow. That's amazing. To what new end will you focus your
amazing powers of ignoring?

>> *In*

>> *other words, you can no longer assert trade secret protection,*

> *That's great, and is precisely what the person who gave you the code
> wants. He'd have given you the code under a restrictive licence
> otherwise.*

Except he can't do that because the GPL prohibits him from doing so.

>> *you will have*

>> *implications on attempts to get patent protection.*

>

> *Good – software can't be patented (except in the crazy US of A).*

For the love of god, nobody was talking about patenting the software.
What I was talking about, and this was perfectly clear and I can't imagine

any way you could have misread it except deliberately, was whether the information was made public. Whether something is public or not has implications on attempts to patent it, so looking at patent law and precedent provides a good way to know what it means for something to be "public" or not.

>> *In the current situation (a GPL'd work) there are no restrictions on
>> *distribution* and none can be placed.*

> *Good. But yes, there is a restriction – namely that you must supply the
> source code along with the program. It's a restriction stopping you
> trying to restrict access to something the author did not want
> restricted.*

That is not a restriction on distribution of the source code. There are no restrictions on distribution of the source code. The source code is public at that point.

>> >> >> *Unless
>> >> >> everyone who has the information is under your control or otherwise
>> >> >> restricted from distributing it, the information is public.
>> >> >
>> >> > No it isn't.
>> >>
>> >> It is.
>>
>> > Well, I meant to contradict only the unconditional sense of your
>> > statement
>> > (if it has one) because as I said, your statement is (a) hypothetical,
>> > and (b) the hypotheses are not satisfied:
>>
>> My statement presents the definition of "public". In the current
>> case,
>> the GPL *prohibits* restrictions on distribution.*

> *You are in the context of work not governed by a licence. In that case
> your work is protected by copyright (and such fragments of IP law as may
> apply). So it is true that everyone "who has the [you write info, but
> that is specious, as they have a code, not info] ... [is] restricted
> from distributing it". Hence your hypothesis fails.*

What the hell are you talking about? When you have a restriction (copyright) and a license that removes **all** restrictions on distribution (the GPL), then in sum you have no restrictions. You can't point to the copyright and argue it's a restriction while ignoring the license that removes the restriction! That's nuts.

Nothing in the GPL prevents someone from distributing the source code to anyone they want. They are not required to get the person to agree to any specific terms before they get the source code. (Of course, it's still subject to copyright. But a newspaper article has full copyright protection

and is still public when it's published and distributed.)

>> *I will strengthen my original statement -- if you have one copy of a*
>
> *You can't, since it is vacuous, being predicated on a false hypothesis.*
>
>> *work that comes into the possession over a third party, and you can place*
>> *no*
>> *restrictions on that third party's ability to distribute that work, then*
>> *you*
>> *have made it legally and effectively public.*
>
> *No you haven't. The author retains copyright. Try it and see!*
>
> *[my patience evaporates at this point .. sorry]*

Copyright has nothing to do with whether a work is public or not. A New York Times front page article is most certainly fully protected by copyright. It is also most certainly public. How else would you make something public if not by publishing it on the front page of the New York Times?

Your talent at making the weaker argument appear the stronger rivals that of Socrates himself.

DS