

Patentrelevante Aspekte der GPLv2/LGPLv2

von

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Agenda

1. Regelungen der GPLv2 zu Patenten
2. Implizite Patentlizenz
3. Funktionsfähigkeit eines "Covenant"?
4. Anmeldung neuer Patente

1. Regelungen der GPLv2 zu Patenten

➤ Präambel:

"Finally, any free program is threatened constantly by software patents. We wish to avoid the danger that redistributors of a free program will individually obtain patent licenses, in effect making the program proprietary. To prevent this, we have made it clear that any patent must be licensed for everyone's free use or not licensed at all."

1. Regelungen der GPLv2 zu Patenten

➤ Sec. 7:

"If, as a consequence of a court judgment or allegation of patent infringement or for any other reason (not limited to patent issues), conditions are imposed on you (whether by court order, agreement or otherwise) that contradict the conditions of this License, they do not excuse you from the conditions of this License. If you cannot distribute so as to satisfy simultaneously your obligations under this License and any other pertinent obligations, then as a consequence you may not distribute the Program at all. "

1. Regelungen der GPLv2 zu Patenten

➤ Sec. 7:

"For example, if a patent license would not permit royalty-free redistribution of the Program by all those who receive copies directly or indirectly through you, then the only way you could satisfy both it and this License would be to refrain entirely from distribution of the Program."

1. Regelungen der GPLv2 zu Patenten

➤ Sec. 7:

"It is not the purpose of this section to induce you to infringe any patents or other property right claims or to contest validity of any such claims; this section has the sole purpose of protecting the integrity of the free software distribution system, which is implemented by public license practices."

1. Regelungen der GPLv2 zu Patenten

➤ Sec. 8:

"If the distribution and/or use of the Program is restricted in certain countries either by patents or by copyrighted interfaces, the original copyright holder who places the Program under this License may add an explicit geographical distribution limitation excluding those countries, so that distribution is permitted only in or among countries not thus excluded. In such case, this License incorporates the limitation as if written in the body of this License."

2. Implizite Patentlizenz

- Sec. 0: *"The act of running the Program is not restricted,..."*
- Sec. 1: *„You may copy and distribute verbatim copies of the Program's source code as you receive it, in any medium,..."*
- Sec. 2: *„You may modify your copy or copies of the Program or any portion of it, thus forming a work based on the Program, and copy and distribute such modifications or work under the terms of Section 1 above,..."*

2. Implizite Patentlizenz

- Sec. 2b: *"You must cause any work that you distribute or publish, that in whole or in part contains or is derived from the Program or any part thereof, to be licensed as a whole at no charge to all third parties under the terms of this License. "*
- Weiterentwicklungen die eigene Patente implementieren enthalten auch implizite Patentlizenz
- Beschränkung auf konkreten Code

3. Funktionsfähigkeit eines „Covenant“

- Beispiel: Microsoft verspricht Novell, keine Patentansprüche gegen Kunden von Novell geltend zu machen
- Annahme: Software verletzt Patente von Microsoft
- Rechtsfolge: Novell darf gem. Sec. 7 die Software überhaupt nicht vertreiben?
- Deutschland: ergänzende Vertragsauslegung, USA: ?

4. Anmeldung von neuen Patenten

- Anmeldung von Patenten wird durch GPLv2 nicht verboten
- Beim Vertrieb von Weiterentwicklungen müssen angemeldete Patente *insoweit* mitlizenziert werden
- Realtime-Linux und Patent von Victor Yodaiken