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News

Is Microsoft Ready to Assert IP Rights over the Internet? In the aftermath of Sender ID, some are concerned that Microsoft may use its vague IP claims over basic Internet protocols against other companies and open-source developers.

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Has Microsoft been trying to retroactively claim IP (intellectual property) rights over many of the Internet's basic protocols? Larry J. Blunk, senior engineer for networking research and development at <http://www.merit.edu> Merit Network Inc., believes that might be the case. Blunk expressed these concerns about

Microsoft's Royalty Free Protocol License Agreement in a recent note to the IETF's Intellectual Property Rights Working Group. Specifically, Blunk suggested that Microsoft seemed to be claiming IP rights to many vital Internet protocols. And by so doing, "Microsoft is injecting a significant amount of unwarranted uncertainty and doubt regarding non-Microsoft implementations of these protocols," Blunk said. Blunk pointed out that Microsoft is claiming some form of IP rights over "a total of 130 protocols which Microsoft is offering for license."

"Many of the listed protocols are [IETF] RFC [request for comment] documents, including but not limited to the core TCP/IP v4 and TCP/IP v6 protocol specifications," he said in his note.

Some of the RFC protocols that Microsoft asserts that it may have IP rights over, such as the TCP/IP protocols and the DNS (Domain Name System), form the very bedrock of the Internet's network infrastructure.

"Microsoft does not specify how this list of protocols was derived and to what extent they have investigated their possible rights holdings over these protocols," Blunk said. "The list appears to be a near but not completely exhaustive list of public protocols implemented in Microsoft products.

"It is quite likely that an individual or organization would be intimidated into signing the license agreement simply due to Microsoft's vast financial and legal resources," he said. "Further, because Microsoft provides no reference to any proof of applicable rights holdings [such as patent numbers], it is impossible to ascertain whether Microsoft indeed has legitimate rights holdings."

Does Blunk, who is an engineer, have a legitimate point with his IP legal concerns? Several lawyers said they think he does.

Next Page: The Sender ID matter.

Lawrence Rosen, a partner in the law firm

Rosenlaw & Einschlag and author of "Open Source Licensing: Software Freedom and Intellectual Property Law," said he thinks Blunk "raises very interesting and important questions." "As much as I can tell, this is the same license that the open-source community found unacceptable in the Sender ID matter," Rosen said. "Microsoft now seems to be imposing that agreement on many other potential IETF standards.

"This is probably Microsoft's strategy, to impose licensing friction in the open-source distribution process," he said. "IETF's failure to respond appropriately to the Sender ID proposal has left the door wide open for this mischief."

Click [here](#) to read about how the IETF shut down the MARID (MTA Authorization Records in DNS) working group because of Sender ID concerns.

Glenn Peterson, an IP attorney and shareholder with Sacramento-based law firm

McDonough Holland & Allen, agreed with Blunk "It is not clear to what degree, if any, that Microsoft has enforceable intellectual property rights in the 130 protocols identified in the so-called 'royalty-free' license agreement." "Thus, by signing the agreement as it presently stands, one might be agreeing to certain things gratuitously, meaning simply that the licensee agrees to give Microsoft continuing control over how the protocols are used," Peterson said. "Among other things, the agreement gives Microsoft ongoing control over enhancements and updates, including the right to charge a license for them in the future."

"The Technical Documentation compliance requirement ensures that Microsoft maintains control over interoperations and improvements to the protocols," he said, adding that this is of even more concern. "Basically, it prohibits researchers from making enhancements designed to improve interoperative performance."

Moving along, Peterson said, "The agreement also allows Microsoft to terminate the licensee on 30 days' notice, and subjects the licensee to the jurisdiction of Washington state courts. It further provides that Microsoft recover legal fees incurred in any dispute over the agreement."

What this all adds up to is that the "lack of specificity of rights holdings combined with the restrictive requirements of the agreement are both cause for concern and require further discussion," Peterson said. "Without refinement and clarification of the rights actually conveyed in the agreement, licensees may be shackling themselves with significant contractual burdens that would not apply in the public domain."

"To me, this looks a lot like Tom Sawyer's unpainted fence. Thought to be a grand opportunity at first, Huck Finn soon realized that he was just painting someone else's fence for free," Peterson said.

Microsoft, however, has said it believes the issue is really just a misunderstanding.

"Microsoft is aware of the letter to the IAB and is working on a response to the concerns raised by the letter author and on providing clarity about our participation in standards-setting activities," said Mark Martin, a Microsoft spokesperson. "In the end, we believe this is simply a misunderstanding which we are working hard to clarify."

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