

EXHIBIT A

BRUCE PERENS

JUNE 28, 2017 BY BRUCE

Warning: Grsecurity: Potential contributory infringement and breach of contract risk for customers

It's my strong opinion that your company should avoid the Grsecurity product sold at grsecurity.net because it presents a contributory infringement and breach of contract risk.

Grsecurity is a patch for the Linux kernel which, it is claimed, improves its security. It is a derivative work of the Linux kernel which touches the kernel internals in many different places. It is inseparable from Linux and can not work without it. it would fail a fair-use test (obviously, ask offline if you don't understand). Because of its strongly derivative nature of the kernel, it must be under the GPL version 2 license, or a license compatible with the GPL and with terms no more restrictive than the GPL. Earlier versions were distributed under GPL version 2.

Currently, Grsecurity is a commercial product and is distributed only to paying customers. Under their [Stable Patch Access Agreement](#), customers are warned that if they redistribute the Grsecurity patch, as would be their right under the GPL, that they will be assessed a *penalty*: they will no longer be allowed to be customers, and will not be granted access to any further versions of Grsecurity. GPL version 2 section 6 explicitly prohibits the addition of terms such as this redistribution prohibition.

By operating under their policy of terminating customer relations upon distribution of their GPL-licensed software, Open Source Security Inc., the owner of Grsecurity, creates an expectation that the customer's business will be damaged by losing access to support and later versions of the product, if that customer exercises their re-distribution right under the GPL license. Grsecurity's Stable Patch Access Agreement adds a term to

the GPL prohibiting distribution or creating a penalty for distribution. GPL section 6 specifically prohibits any addition of terms. Thus, the GPL license, which allows Grsecurity to create its derivative work of the Linux kernel, terminates, and the copyright of the Linux Kernel is infringed. The GPL does not apply when Grsecurity first ships the work to the customer, and thus the customer has paid for an unlicensed infringing derivative work of the Linux kernel developers with all rights reserved. The contract from the Linux kernel developers to both Grsecurity and the customer which is inherent in the GPL is breached.

As a customer, it's my opinion that you would be subject to both contributory infringement and breach of contract by employing this product in conjunction with the Linux kernel under the no-redistribution policy currently employed by Grsecurity.

I have previously endorsed a company that distributes enhanced versions of GPL software to paying customers, but that company operated differently (and in a way that I would recommend to Grsecurity). They did not make any threat to customers regarding redistribution. They publicly distributed their commercial version within 9 months to one year after its customer-only distribution.

This other company was essentially receiving payment from its customers for the work of making new GPL software available to the public after a relatively short delay, and thus they were doing a public benefit and were, IMO, in compliance with the letter of GPL though perhaps not the spirit. In contrast, Grsecurity does no redeeming public service, and does not allow any redistribution of their Linux derivative, in direct contravention to the GPL terms.

In the public interest, I am willing to discuss this issue with companies and their legal counsel, under NDA, without charge.

I am an intellectual property and technology specialist who advises attorneys, not an attorney. This is my opinion and is offered as advice to your attorney. Please show this to him or her. Under the law of most states, your attorney who is contracted to you is the only party who can provide you with legal advice.

EXHIBIT B



Stable Patch Access Agreement

Last updated: 10/02/2016

This Stable Patch Access Agreement ("Agreement") allows access to the stable versions of grsecurity® kernel patches. An authorized user includes the individual(s) provided with login credentials directly by Open Source Security, Inc ("the Company"). or others within the organization involved in the stable patch subscription identified to Open Source Security, Inc. (collectively, "the User")

Confidentiality

The User agrees that the User is responsible for maintaining the confidentiality of their login credentials. Disclosure of these credentials is prohibited except as allowed by this agreement.

Redistribution

The User has all rights and obligations granted by grsecurity's software license, version 2 of the GNU GPL. These rights and obligations are listed at <http://www.gnu.org/licenses/old-licenses/gpl-2.0.en.html> (<http://www.gnu.org/licenses/old-licenses/gpl-2.0.en.html>).

Notwithstanding these rights and obligations, the User acknowledges that redistribution of the provided stable patches or changelogs outside of the explicit obligations under the GPL to User's customers will result in termination of access to **future** updates of grsecurity stable patches and changelogs.

Making and using copies of the stable patches within a single organization is not considered redistribution (see the GPL FAQ here: <https://www.gnu.org/licenses/old-licenses/gpl-2.0-faq.en.html#InternalDistribution> (<https://www.gnu.org/licenses/old-licenses/gpl-2.0-faq.en.html#InternalDistribution>)).

If the User has received pricing for the stable patches on a specific product, use of the patches on additional products without the consent of the Company will result in termination of access to **future** updates of grsecurity stable patches and changelogs.

Works Made For Hire

No work performed in the process of grsecurity stable patch maintenance or changes made to the grsecurity patches as part of a support agreement shall be considered "works made for hire". Unless a specific arrangement has been put forth otherwise by the Company, the Company retains all Intellectual Property rights and will publish these changes under the GPL to all customers.

Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Pennsylvania without regard to the conflicts of laws provisions thereof. Exclusive jurisdiction and venue for any action arising under this Agreement is in the federal and state courts having jurisdiction over The Company's principal office, and both parties hereby consent to such jurisdiction and venue for this purpose.

Termination

While the Company aims only to terminate access to the stable patches in the event of willful violation of the terms in this agreement, we reserve the right to revoke access to the stable patches and changelogs at any time for any reason. In the event of termination, the Company will at its own discretion refund payment for any remaining pre-paid period.

Waiver of Liability

The Company is not liable for any claims, damages, costs, expenses or loss of any kind that may be made or incurred as a result of either the User's access or revocation of access to grsecurity stable patches.

QUICK LINKS

Home (index.php)	(features.php)
Features	Support

[\(support.php\)](#)

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[Blog \(blog.php\)](#)[Papers \(papers.php\)](#)[Download
\(download.php\)](#)

GET IN TOUCH

949-424-7732 (tel:949-424-7732)

contact@grsecurity.net (mailto:contact@grsecurity.net)

Trademark Policy (trademark_policy.php)

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grsecurity is a registered trademark of Open Source Security, Inc. Linux is the registered trademark of Linus Torvalds.

EXHIBIT C

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Re: Why does no one care that Brad Spengler of GRSecurity is blatantly violating the intention of the rightsholders to the Linux Kernel?

- *To:* "Bradley M. Kuhn" <bkuhn@sfconservancy.org>
- *Cc:* debian-user@lists.debian.org
- *Subject:* Re: Why does no one care that Brad Spengler of GRSecurity is blatantly violating the intention of the rightsholders to the Linux Kernel?
- *From:* Bruce Perens <bruce@perens.com>
- *Date:* Fri, 14 Jul 2017 13:07:12 -0700
- *Message-id:*
<[\[img alt="broken icon"\] CAK2MWOsMHNCyQbfx4r0AtHbgP9r2SeizBBjf48eMACcVuzcPsg@mail.gmail.com](mailto:CAK2MWOsMHNCyQbfx4r0AtHbgP9r2SeizBBjf48eMACcVuzcPsg@mail.gmail.com)>
- *In-reply-to:* <[\[img alt="broken icon"\] 87d192dhh8.fsf@ebb.org](mailto:[img alt=)>
- *References:* <a39831d34e5a4f6a32c6b31ce77fadbf@airmail.cc> <E1dN1cA-0000uP-IF@fencepost.gnu.org>
<CAK2MWOuWQPovpYWzAN76pd47fGE13RmvzbUGyjDnTGnaRqqd6w@mail.gmail.com>
<CAK2MWOudwKTFaHhgtVVE8rwiL4-LX2SbkqbYRdUz---TvtpBuQ@mail.gmail.com>
<[\[img alt="broken icon"\] 87d192dhh8.fsf@ebb.org](mailto:[img alt=)>

Hi Bradley,

I was proceeding after others in the community had already made contact and were rebuffed.

I have definitely looked at the principles of GPL-oriented enforcement that SFC is currently distributing. I have some issues with your current policy.

Let's discuss the policy of forgiveness of past offenses in exchange for current compliance. This has worked very well for the non-profit projects that SFC is actually able to serve, because there is literally no reason for the well-counseled offender not to settle with SFC. Both of us have experience with highly visible deep-pockets offenders who have not been well enough counseled to accept this easy exit from violation.

As you know, I have a compliance business. I have advised every client without exception to come into compliance with the GPL as soon as possible, and where allowed I have engineered that compliance. The companies that reject that advice do not become my customer.

We should remain aware that Richard and Eben made an exception to the policy of not asking for financial damages in the case of Cisco, for quite a large settlement.

With the advent of dual-licensing as used by Artifex (Ghostscript) since 1984, MySQL since the 1990's, and others, we have a paradigm that arguably makes the GPL more fair to more people, especially the GPL developers themselves. Those who wish to participate in the GPL's partnership of sharing do, those who do not pay money, and the money goes to paying the developers to make more good Free Software under the GPL. The developers do not have to wear hair shirts or spend their days as waiters or as programmers of

proprietary software for big companies, but can support their families while creating Free Software. This worked for Peter Deutsch who has been able to enjoy retirement as a composer and musician as a result, and of course for Michael Widenius and his partners in MySQL. We are all using the result of these dual-license enterprises.

It seems to me that it would be fair for these dual-licensing companies, who offered the GPL but made dual licensing available to those who did not wish to accept the GPL terms, to exact the fees of lost commercial licensing from commercial infringers. Those infringers clearly had paid licensing as an option. Dual-licensing is not inimical to the philosophy of Free Software, and SFC should support the dual-license enterprises in collecting fair damages.

I am also concerned because in our society there is a right to sue and collect damages in compensation for violation of your rights, and SFC may have allowed itself, without planning to, to be in the position of suppressing developer's rights. Obviously I am aware of the excesses of the "intellectual property" and tort system, and moderation is necessary. But entirely suppressing the right to collect damages doesn't sound like a good solution.

Then we have the issue of SFC's obvious inability to pursue all but a fraction of one percent of all violators. Besides the obvious cases which remain untried, I have in my own practice twice witnessed SFC so short-staffed as to be unable to respond for many months to a company that was attempting to settle with SFC, and another company that had settled and was attempting to fulfill its continuing obligation to SFC. So, here SFC is as the only organization with funding to pursue violations of the GPL, closing out the avenue for other such organizations to fund themselves through settlement and take up some of the case load. And the developers don't get served and get de-motivated by the persistent and un-remedied infringements. So, unfortunately, the principles of community-oriented enforcement aren't actually serving the community.

Recently, we have observed:

1. Failure of SFC or its funded parties to attempt to appeal the VMWare decision or find another plaintiff.
2. A consultation with the Linux kernel developers who are not terribly in favor of enforcement, I feel due to prejudices so loudly expressed by Linus Torvalds, who just doesn't accept that lawyers are of any benefit to society.
3. No visible enforcement for quite a while.
4. Very many egregious violations in our sight that we have no way to cure.

So eventually, Bradley, we lose patience. I have no way to fund enforcement of GPL violations. I don't have confidence that you can ever handle more than 1% of them, and you don't tell me what 1% you are working on. I only have publicity as a tool.

Thanks

Bruce

On Fri, Jul 14, 2017 at 11:06 AM, Bradley M. Kuhn <bkuhn@sfconservancy.org> wrote:

[I'm not on debian-user regularly but I was dragged into the thread by a large cc list that Bruce started. Removing individual email addresses of possible non-list members, other than Bruce.]

Bruce, if you haven't looked at the Principles of of Community-Oriented

Enforcement <<https://sfconservancy.org/copyleft-compliance/principles.html>>, which were co-published by Conservancy and the FSF, and endorsed by a wide range of other organizations, including FSF Europe and the OSI, you should definitely do so.

The most relevant principle regarding your public post referenced in this thread is: "Confidentiality can increase receptiveness and responsiveness." You don't indicate in your blog post that you put in efforts to resolve this matter confidentially and sought compliance in a collaborative and friendly way first. That's a mistake, in my opinion.

Conservancy often spends years of friendly negotiations, attempting to resolve a GPL enforcement matter before making public statements about it. We have found in our extensive experience of enforcing the GPL that early public statements sometimes thwarts not just our enforcement efforts, but the enforcement efforts of others.

Finally, I have an important general statement that those concerned about violations should consider: With hundreds of known GPL violations going on around the world every day, we should as a community be careful not to over-prioritize any particular violation merely because the press becomes interested. Rather, the giant worldwide queue of known GPL violations should be prioritized by figuring out which ones, if solved, will do the most to maximize software freedom for all users.

--

Bradley M. Kuhn
Distinguished Technologist of Software Freedom Conservancy

=====
Become a Conservancy Supporter today: <https://sfconservancy.org/supporter>

Reply to:

- debian-user@lists.debian.org
- [Bruce Perens \(on-list\)](#)
- [Bruce Perens \(off-list\)](#)

• Follow-Ups:

- [funding & viability questions of GPL enforcement.](#)
 - *From:* "Bradley M. Kuhn" <bkuhn@sfconservancy.org>

• References:

- [Re: Why does no one care that Brad Spengler of GRSecurity is blatantly violating the intention of the rightsholders to the Linux Kernel?](#)
 - *From:* "Bradley M. Kuhn" <bkuhn@sfconservancy.org>

- Prev by Date: [Re: jesse->stretch for DYMO label printer](#)
- Next by Date: [systemd & postgresql - flooding system log](#)
- Previous by thread: [Re: Why does no one care that Brad Spengler of GRSecurity is blatantly violating the intention of the rightsholders to the Linux Kernel?](#)
- Next by thread: [funding & viability questions of GPL enforcement.](#)

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EXHIBIT D

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Re: Why does no one care that Brad Spengler of GRSecurity is blatantly violating the intention of the rightsholders to the Linux Kernel?

- To: rms@gnu.org
- Cc: aconcernedfossdev@airmail.cc, debian-user@lists.debian.org, Eric Raymond <esr@thyrsus.com>
- Subject: Re: Why does no one care that Brad Spengler of GRSecurity is blatantly violating the intention of the rightsholders to the Linux Kernel?
- From: Bruce Perens <bruce@perens.com>
- Date: Mon, 19 Jun 2017 12:15:32 -0700
- Message-id: <[\[📧\] CAK2MWOUwQPOvpYWzAN76pd47fGE13RmvzbUGyjDnTGnaRqqd6w@mail.gmail.com](mailto:CAK2MWOUwQPOvpYWzAN76pd47fGE13RmvzbUGyjDnTGnaRqqd6w@mail.gmail.com)>
- In-reply-to: <[\[📧\] E1dN1cA-0000uP-IF@fencepost.gnu.org](mailto:[📧] E1dN1cA-0000uP-IF@fencepost.gnu.org)>
- References: <a39831d34e5a4f6a32c6b31ce77fadbf@airmail.cc> <[\[📧\] E1dN1cA-0000uP-IF@fencepost.gnu.org](mailto:[📧] E1dN1cA-0000uP-IF@fencepost.gnu.org)>

I think I'll be able to write something to inform present and potential customers of the lawsuit risk and their position as contributory infringers. This is more effective than writing to the company.

Thanks

Bruce

On Mon, Jun 19, 2017 at 11:41 AM, Richard Stallman <rms@gnu.org> wrote:

```
[[[ To any NSA and FBI agents reading my email: please consider  ]]]
[[[ whether defending the US Constitution against all enemies,  ]]]
[[[ foreign or domestic, requires you to follow Snowden's example. ]]]
```

I am not trying to study the GRsecurity case because (0) it's complicated, and it would take a lot of time to think about, (1) the FSF has no say in the matter (it is about Linux) and (2) I don't think the company would heed whatever I might say.

--

Dr Richard Stallman
President, Free Software Foundation (gnu.org, fsf.org)
Internet Hall-of-Famer (internethalloffame.org)
Skype: No way! See stallman.org/skype.html.

Reply to:

- debian-user@lists.debian.org

- [Bruce Perens \(on-list\)](#)
 - [Bruce Perens \(off-list\)](#)
-

- **Follow-Ups:**

- [Re: Why does no one care that Brad Spengler of GRSecurity is blatantly violating the intention of the rightsholders to the Linux Kernel?](#)
 - *From:* Bruce Perens <bruce@perens.com>

- **References:**

- [Re: Why does no one care that Brad Spengler of GRSecurity is blatantly violating the intention of the rightsholders to the Linux Kernel?](#)
 - *From:* Richard Stallman <rms@gnu.org>

- Prev by Date: [Re: Why does no one care that Brad Spengler of GRSecurity is blatantly violating the intention of the rightsholders to the Linux Kernel?](#)
- Next by Date: [Re: Record audio streaming?](#)
- Previous by thread: [Re: Why does no one care that Brad Spengler of GRSecurity is blatantly violating the intention of the rightsholders to the Linux Kernel?](#)
- Next by thread: [Re: Why does no one care that Brad Spengler of GRSecurity is blatantly violating the intention of the rightsholders to the Linux Kernel?](#)
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Bruce Perens Warns Grsecurity Breaches the Linux Kernel's GPL License

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The Fine Print: The following comments are owned by whoever posted them. We are not responsible for them in any way.

Uhhhhhhh (Score:0) My company has purchased grsecurity patches in a fashion where it's possible for someone to buy a product and request source

Re: No, nobody is making it up. What has your interaction been with them since April?

Re: This was expressly and explicitly communicated to us in an email specifically describing the April change in licensing.

Re:Uhhhhhhh (Score:3)

by Bruce Perens (3872) <bruce@perens.com> on Monday July 10, 2017 @12:30PM (#54779183) Homepage Journal

I got a copy of the agreement. It's [here](#) [perens.com]. It's pretty clearly in violation. The offending language is:

Notwithstanding these rights and obligations, the User acknowledges that redistribution of the provided stable patches or changelogs outside of the explicit obligations under the GPL to User's customers will result in termination of access to future updates of grsecurity stable patches and changelogs.

The entire point of the language in section 6 of the GPL is so that another party can *not* cause you to negotiate away your GPL rights.

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Comments Filter: **All** [Insightful](#) [Informative](#) [Interesting](#) [Funny](#)**The Fine Print:** The following comments are owned by whoever posted them. We are not responsible for them in any way.**[Does Anyone Use That? \(Score:5, Funny\)](#)** Grsecurity is snakeoil dogshit.

- └ **[Re: Does Anyone Use That?](#)** Thanks for that well reasoned remark, way to contribute. The core kernel crowds utter unreasoning hostility toward
 - └ **[Not related to their mark](#)** Grsecurity recently changed its terms due to widespread abuse of its mark. Dear AC, if that's really their intent,
 - └ **Re:** Hi Bruce, as far as I understand it grsecurity changed its terms back in April. [theregister.co.uk] They seem to suggest that they supply
 - └ **Re:** Redhat sequesters their support information from non-customers. It's really difficult to make a case that the support data is derivative
 - └ **Re:** Lets say I release (sell) v1.0 of my software to person A, B and C under GPL2. Then B does something I don't like, but I can't do
 - └ **Re:** A lot of people are having a problem with the time sequence of events. Let's say you warn someone in advance that you will
 - └ **Re:** I'm confused, and I'm happy to be proven wrong, but I'm having trouble with this: Let's say you warn someone in advance

Re: Not related to their mark (Score:2)by [Bruce Perens \(3872 \)](#) <bruce@perens.com> on Monday July 10, 2017 @12:07PM (#54778995) [Homepage](#) [Journal](#)

I got a copy of Grsecurity's [Stable Patch Access Agreement](#). [perens.com] It's a written term, given to you before the act of distribution. It's rather imprudent of them to write it down if you ask me.

The entire point of the language against additional terms in the GPL is so that others *can not* negotiate with you for you to give up any of your GPL rights.

I don't think this gives you an obligation to support software you didn't provide. You are not, in that case, refusing to support the software that you *did* provide. In contrast, Grsecurity shuts the customer off entirely.

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↳ **Re:** Ah, so (still confused, but I think I see what you're getting at) - are you saying it was a straightforward "You can

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- └ **Re:** Bruce, Your blog post states that "the contract from the Linux kernel developers to both Grsecurity and the customer which is inherent in the
 - └ **Re:** Let's look at what the magistrate said: Defendant contends that Plaintiff's reliance on the unsigned GNU GPL fails to plausibly demonstrate
 - └ **Re:** You are taking a very simplistic view of the GPL that doesn't fit what you appear to be representing with your user name. Did you
 - └ **Re:** OK, if you're a real lawyer, I have no problem arguing law with you. I've won against folks who were admitted to the supreme court
 - └ **Re:** The customer has that license for the kernel. Which means that the original developers cannot properly sue the customers for
 - └ **Re:** Which means that the original developers cannot properly sue the customers for infringement or breach of contract concerning
 - └ **Re:** Just to be clear Bruce, The fact that the user has the GPL for some other copy of a Linux kernel does not license the

Perception of the GPL (Score:3)

by Bruce Perens (3872) <bruce@perens.com> on Monday July 10, 2017 @11:54AM (#54778917) Homepage Journal

If you wanted to stoke the perception that GPLed code is "toxic" in yet another unhelpful and nebulous way, you couldn't have picked a better way...

Actually, all I see so far is that an intentional GPL violator's customers are not protected from that intentional violation. It's not

at all clear that this is in any way offered from the proprietary software licensing world, where a contributory infringement case brought on the customer rather than the vendor is a frequent strategy.

I check out the software licenses that are offered to my customers. Sometimes I red-light a proprietary software vendor because I don't believe they have the right to offer their own software. This is often obvious from their licensing. Similarly, a company should not accept a commercial issue of a GPL work if it's not sure the vendor has a right to offer the work.

I am sorry that due diligence is required, but of course the Free Software folks didn't invent this intellectual property mess.

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[Please Read The Entire Statement \(Score:5, Informative\)](#) You should read the entire statement [perens.com], because there are things missing

- └ **[Re:](#)** Bruce, Your blog post states that "the contract from the Linux kernel developers to both Grsecurity and the customer which is inherent in the
 - └ **[Re:](#)** Let's look at what the magistrate said: Defendant contends that Plaintiff's reliance on the unsigned GNU GPL fails to plausibly demonstrate
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 - └ **[Re:](#)** Which means that the original developers cannot properly sue the customers for infringement or breach of contract concerning
 - └ **[Re:](#)** Just to be clear Bruce, The fact that the user has the GPL for some other copy of a Linux kernel does not license the

[Re: Please Read The Entire Statement \(Score:2\)](#)

by [Bruce Perens \(3872 \)](#) <bruce@perens.com> on Monday July 10, 2017 @11:45AM (#54778825) [Homepage](#) [Journal](#)

I just copied Eben again this morning, as I'd received a copy of the Grsecurity Stable Patch Access Agreement, which I had not previously had in hand. I also included another link to my article. No word from Eben yet.

While the user may not be responsible for the sins of the distributor, this is only the case after the distributor successfully conveys the GPL to the user upon the work. I contend that the distributor never had the right to convey the GPL to the user at

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all upon an infringing derivative work, and that a direct grant by the kernel developers to the user is thus never triggered.

Also, keep in mind that if the user does successfully receive the GPL on a work, they must be fully in compliance (section 4) for the GPL to continue. If the "sins" of the distributor are repeated by the user, the user is not in compliance. The point here is that the user need not pay for a "sin" which they do not repeat, nor may the distributor perform a deliberate action which terminates the user's GPL rights unless the user repeats that action.

When the user receives the infringing derivative work, and when the user applies the patch, they inherit the previous infringement from the distributor. The GPL does not wash clean that infringing status for the user.

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- └ [Re:](#) While the user may not be responsible for the sins of the distributor, this is only the case after the distributor
- └ [Re:](#) The infringing derivative work is not the software which the Linux developers license to people under the GPL. It is a
- └ [Re:](#) You are also ignoring the paragraph after the one you cited: Protection Against Additional Restrictions Usersâ(TM)

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Bruce Perens Warns Grsecurity Breaches the Linux Kernel's GPL License

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 - └ **Re:** Which means that the original developers cannot properly sue the customers for infringement or breach of contract concerning
 - └ **Re:** Grsecurity is an unlicensed derivative work and it's owned in part by the kernel developers because it necessarily includes

Re: Please Read The Entire Statement (Score:3)

by Bruce Perens (3872) <bruce@perens.com> on Monday July 10, 2017 @10:57AM (#54778423) Homepage Journal

No. Merely purchasing the existing combination of code does not provide the required right and ability to supervise or control the infringing activity. You are well outside the bounds of your expertise, and it shows.

In this case, it's the reverse. I understand how the software is applied (this is why I'm an expert witness in demand) and

you're out of your expertise, sorry. The customer applies the patch. That gives them control of the infringing activity.

Those portions of the original work have been licensed to the customers by the GPLv2 sec 6. The license to those portions of the original work cannot be terminated per GPLv2 sec 4. The customer is also expressly licensed to make such a combination by GPLv2 sec. 2 so long as they do not publish or distribute the combined work.

Weren't you going to ask Eben about this? Why don't you do so, and get back to me. I still don't believe they're licensed.

By the way, I got the Grsecurity [agreement](#) [perens.com]. They actually put down in writing how they restrict the customer's GPL rights.

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Because the GPL doesn't apply to the infringing derivative work, as it terminated when it was not complied with, and Open Source Security, Inc. doesn't have a right to license it to others or to apply the GPL to it. So, the customers have a work with no valid license and the kernel developers own the only remedy that would permit its legal use.

If the customers had the GPL on that work, distribution might be relevant. They don't. Also keep in mind that distribution is not the only thing you can do to violate the GPL. You can create a derivative work that is in violation even before distribution.

[Reply to This](#)[Parent](#)[Share](#)**Re:** The counter-argument here is that the customers already have a valid license to the Linux kernel, with the GPL already granted, and the**Re:** I want to add some analysis here, following the appellate court's ruling in Oracle v Google (if you haven't read it already, I strongly

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[Re:Please Read The Entire Statement \(Score:3\)](#)

by [Bruce Perens \(3872 \)](#) <bruce@perens.com> on Sunday July 09, 2017 @11:12PM ([#54776241](#)) [Homepage](#) [Journal](#)

Which means that the original developers cannot properly sue the customers for infringement or breach of contract concerning use of the Linux kernel. Check. You've now admitted that there's no basis for liability absent a customer's own violation of the GPL.

I admitted no such thing. And telling me what I admitted, when I haven't, is a rhetorical trick, not argument.

Grsecurity is an unlicensed derivative work and it's owned in part by the kernel developers because it necessarily includes portions

Case 3:17-cv-00217-PL Document 1-1 Filed 07/17/17 Page 30 of 48
of the original work. The GPL does not apply to that copy. The fact that the user has the GPL for some other copy of a Linux kernel does not license the infringing derivative work to the user. Nor does it grant Open Source Security Inc. the ability to convey the GPL for that work.

But the original developers do not own Grsecurity's modifications.

Actually, they do! Not the whole thing, but the derivative work necessarily incorporates a significant portion of the original work, and this is definitely true for the patch format used. The GPL doesn't apply to that copy as its terms were not honored, and OSS never had a right to convey the GPL originally on that copy. A GPL conveyed by someone else for another copy of Linux does not apply to the infringing derivative work. Grsecurity has no right to distribute it at all. The Linux kernel developers own the only remedy that will make its legal use possible.

Termination of the kernel license to Grsecurity does not affect the rights of their customers, or any other users, per GPLv2 secs. 4 and 6.

It does indeed if Grsecurity never had the right to convey the GPL on that work to the users in the first place. You can't convey it on a derivative work without a license from the owners of the work it was derived from. Grsecurity did not have that license because they did not comply with it.

Denied. You have not explained how Grsecurity cannot license its own modifications under the GPL, nor how anyone other than Grsecurity could sue users for using those modifications. You have admitted that customers and users are licensed to use the Linux kernel even if Grsecurity is not. You will have to admit that users can modify the Linux kernel if they so choose, even using non-GPLv2 modifications, so long as they do not publish or distribute the result (GPLv2 secs. 2 and 3).

OK, this one is too much. Look, I know that lawyers will try to fool the other side to win an argument. I've had it happen before. It's not going to make me accept your argument. I explained clearly where Grsecurity could not license its infringing derivative work. You're being silly to contend that anyone can license an infringing derivative work to someone else without a lot more permission than the GPL contains.

To reiterate, the customer has been licensed by the original developers for the original kernel and by Grsecurity for the modifications.

The infringing derivative work was never licensed to the customers, because Grsecurity never had a right to license it to anyone. The copies of the kernel that are under the GPL came to the customer another way, if they have any, and the fact that the user has the GPL from someone else on another copy does not automatically license the infringing derivative work to the customer.

A contributory infringer is "[o]ne who knowingly induces, causes or materially contributes to copyright infringement, by another but who has not committed or participated in the infringing acts him or herself, may be held liable as a contributory infringer if he or she had knowledge, or reason to know, of the infringement."

They have now been informed that there's a good chance of risk of contributory infringement and to check with their counsel. It's public knowledge now. They're paying for copies. That's how they become a contributory infringer.

How does the customer induce, cause, or contribute to copyright infringement by another by merely using Grsecurity's product? For that matter, how does a customer breach the GPL merely by using Grsecurity's product?

By knowingly entering in a contract to acquire an infringing derivative work.

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Re: Please Read The Entire Statement (Score:3)

by Bruce Perens (3872) <bruce@perens.com> on Sunday July 09, 2017 @07:56PM (#54775533) Homepage Journal

OK, if you're a real lawyer, I have no problem arguing law with you. I've won against folks who were admitted to the supreme court before.

The license granted to the customer certainly has not terminated.

The customer has that license for the kernel. They do not have that license for Grsecurity, because Grsecurity's license to the kernel terminated, and Grsecurity did not have the right to grant the GPL to the customer for an infringing derivative work. If Grsecurity was an independent work rather than derivative, it would have been different.

This belongs to a class of arguments I see very frequently, in which the defendant has not complied with the GPL but repeatedly offers the

Sure, refer it to Eben. He's already been copied and has so far not chosen to differ. Richard chose not to be involved because he felt Grsecurity would not listen to him, and he has bigger fish to fry.

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 - └ **Re:** Lets say I release (sell) v1.0 of my software to person A, B and C under GPL2. Then B does something I don't like, but I can't do

Re: Not related to their mark (Score:3)

by Bruce Perens (3872) <bruce@perens.com> on Sunday July 09, 2017 @07:26PM (#54775391) Homepage Journal

A lot of people are having a problem with the time sequence of events.

Let's say you warn someone in advance that you will harm their business by withdrawing their support and removing them from your customer list, should they exercise their right which is granted to them under the GPL. That's adding a term.

Let's say that you never warn them about anything, they distribute stuff, and you decide to downsize your business and fire them as a customer. That is not adding a term.

It took me a while to get this straight myself, for a while I knew something was wrong but did not realize the importance of the time sequence. But I think I could help to win a case with this, if one came up.

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└ [Re:](#) The GPL says nothing about what support you must provide to your customers. In fact, it says that the software is
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└ [Re:](#) I'm confused, and I'm happy to be proven wrong, but I'm having trouble with this: Let's say you warn someone in advance

└ [Re:](#) I got a copy of Grsecurity's Stable Patch Access Agreement. [perens.com] It's a written term, given to you before the
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└ [Re:](#) Ah, so (still confused, but I think I see what you're getting at) - are you saying it was a straightforward "You can

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Re:Please Read The Entire Statement (Score:3)

by Bruce Perens (3872) <bruce@perens.com> on Sunday July 09, 2017 @06:54PM (#54775293) Homepage Journal

Let's look at what the magistrate said:

Defendant contends that Plaintiff's reliance on the unsigned GNU GPL fails to plausibly demonstrate mutual assent, that is, the existence of a contract. Not so. The GNU GPL, which is attached to the complaint, provides that the Ghostscript user agrees to its terms if the user does not obtain a commercial license. Plaintiff alleges that Defendant used Ghostscript, did not obtain a commercial license, and represented publicly that its use of Ghostscript was licensed under the GNU GPL. These allegations sufficiently plead the existence of a contract. See, e.g., *MedioStream, Inc. v. Microsoft Corp.*, 749 F. Supp. 2d 507, 519 (E.D. Tex. 2010) (concluding that the software owner had adequately pled a claim for breach of a shrink-wrap license).

You are misinterpreting the GPL when you say this:

The GPL is Open Source Security Inc.'s only permission to create and distribute a derivative work of the Linux kernel. I don't believe that anyone is denying that Grsecurity was created and distributed, and is derivative. The customer is obtaining and making use of an infringing derivative work. The status of the kernel is "All Rights Reserved" because the GPL has terminated, and that very clearly makes the customer a contributory infringer.

You are taking a very simplistic view of the GPL that doesn't fit what you appear to be representing with your user name. Did you actually sit for the Bar? I know there are a lot of people with a J.D. who don't ever practice, it's a personal choice, but I would have expected a bit more depth in interpretation.

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Re: It's important to consider the goals of the GPL. You get great Free Software, but it's not a gift. It is sharing with rules that must be followed. You

Re:Please Read The Entire Statement (Score:3)

by Bruce Perens (3872) <bruce@perens.com> on Sunday July 09, 2017 @06:42PM (#54775245) Homepage Journal

A lot of people are not understanding the the importance of the time sequence. Because of the actions of Open Source Security Inc. to date, the customer already knows that there is a threat to cause them business damage if they exercise their right to distribution, before they perform the act of distribution. That's an additional term.

You are treating this as if the consequences of distribution are the only relevant element, and as if they only happen after distribution. This is not the case.

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Re:Not related to their mark (Score:5, Interesting)

by Bruce Perens (3872) <bruce@perens.com> on Sunday July 09, 2017 @05:09PM (#54774895) Homepage Journal

The problem isn't with the text there. It's with what else they have told their customers. It doesn't even have to be in writing.

I have witnesses. If there was ever a case, obviously the prosecution would have to depose people to make this point. I am not actually planning on a case, though. I think this warning will have the desired effect.

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Re:Not related to their mark (Score:3)

by Bruce Perens (3872) <bruce@perens.com> on Sunday July 09, 2017 @04:27PM (#54774713) Homepage Journal

Redhat sequesters their support information from non-customers. It's really difficult to make a case that the support data is derivative of the Open Source involved. I don't believe Red Hat has attempted to stop any of their customers from redistributing *an actual patch*. Just other information.

I don't know about Virtuozzo, sorry.

I did not contact Open Source Security Inc. as they had by that time already had extensive and somewhat acrimonious discussions with others in the community.

I think my legal theory holds water - can I sue by the name of action that Open Source Security Inc is doing, and felt that informing the customers (albeit indirectly, in places like Slashdot) was the best way to effect a change. This was a case where publicity was the most effective means of effecting change (even if the only change is that someone else doesn't try to do what's being done with Grsecurity) and was less expensive for all sides than a lawsuit.

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└ [Re:](#) I'm confused, and I'm happy to be proven wrong, but I'm having trouble with this: Let's say you warn someone in advance

└ [Re:](#) I got a copy of Grsecurity's Stable Patch Access Agreement. [perens.com] It's a written term, given to you before the

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└ [Re:](#) Ah, so (still confused, but I think I see what you're getting at) - are you saying it was a straightforward "You can

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Sounds wrong: do they distribute anything that's G (Score:0) I think that argument sounds wrong.

Re:Sounds wrong: do they distribute anything that' (Score:3)

by Bruce Perens (3872) <bruce@perens.com> on Sunday July 09, 2017 @04:16PM (#54774661) Homepage Journal

They don't have to distribute the kernel to violate the GPL in this case. Copyright also restricts the creation of derivative works. Grsecurity definitely is derivative of the kernel. The GPL would be their only permission to create and distribute a derivative work of the kernel. And one of the terms of the GPL is that you can't add any rules to your derivative that aren't in the GPL itself.

With respect, your understanding of copyright and licensing isn't quite complete. This is not a personal criticism, it's true for most people. But legal theories based on what you know so far might not be correct.

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Re: Hi Bruce, Since you say that GRSecurity is 'definitely' a derivative work, and since you know about a million times more than I do, let's accept

Re:Sounds wrong: do they distribute anything that' (Score:4, Interesting)

This is a very large discussion and I'm not going to put in the hour necessary to explain it fully. One of the relevant cases is *Galoob Games v. Nintendo*. In that case, the Game Genie made by Galoob, which let you have infinite lifetime and ammo and thus cheat in Nintendo games, was thought to be a derivative work by Nintendo. Galoob won, because the Game Genie connected to a plug and only modified a few memory locations.

Unlike the modularity of the Game Genie and that of some of the other things you mention, Grsecurity does not limit itself to dealing with Linux through its APIs (like the plugs in the Nintendo console and game cartridge). Instead, Grsecurity gets dirty fingers all over the kernel internals. So, it's derivative.

I am very much a supporter of right to repair and to interoperate, and we should discuss that another time.

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└ [Re:](#) How in the world can there be a right to repair/improve when anything that modifies the internals of a copyrighted work is a derivative
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└ [Re: Sounds wrong: do they distribute anything that](#) You are more than welcome to make derivatives of the Linux kernel and sell them

└ [Re:](#) My contention is that the current state with Grsecurity is like releasing it under NDA. I just wanted to make sure you understood that

└ [Re:](#) Yes I do, many companies try to do this though and I'm not sure Linus has ever actively tried to stop them. Samsung, Amlogic,

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