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Verizon GPL Settlement Highlights Necessity of Open Source Compliance

The Software Freedom Law Center (“SFLC”), an advocacy group that backs many open source lawsuits, announced late last week that it had reached an agreement in a copyright infringement case against Verizon Communications Inc. (“Verizon”) for alleged violations of the General Public License (“GPL”).

In its suit, the SFLC alleged that Verizon had distributed to customers the GPL-licensed BusyBox open source software utility in the firmware of wireless routers supplied by Actiontec Electronics, Inc. (“Actiontec”), and had failed to provide the software’s source code to the public as mandated by the GPL. The BusyBox utility is a primary component of Actiontec’s routers, which are used by Verizon in the deployment of its FiOS broadband service.

The plaintiffs have agreed to dismiss the lawsuit in exchange for Actiontec’s agreement to publish the BusyBox software source code as required by the GPL, notify previous recipients of BusyBox from Verizon of their rights under the GPL, and make an undisclosed cash payment to the BusyBox developers Erik Andersen and Rob Landley. Actiontec must also appoint an internal Open Source Software Compliance Officer to “monitor and ensure GPL compliance.”

What This Means for Your Business

It is now accepted by most in the software community that the GPL is valid and enforceable. All four lawsuits that have been brought by the SFLC have settled out of court in favor of the plaintiffs. The fact that Verizon, one of the largest telecommunications companies in the country, has settled the open source software case against it provides further evidence that companies must take open source licenses seriously and abide by the contractual requirements set forth in such licenses.

Companies need to know not only which open source software applications they are using, but also how they are using them. An open source software compliance program is a necessity for companies of all sizes in order to avoid potentially costly litigation and settlements.

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The open source software compliance steps a company should take include:

- Identifying all open source software it is using.
- Collecting the applicable open source software license agreements for review by legal counsel.
- Developing an open source software use and distribution policy that identifies individuals responsible for reviewing and approving the use of open source software applications.
- Instituting an open source software training program that makes all employees aware of the legal risks involved with using open source software.

Yet compliance must go beyond a company's own software and product development. As this latest case against Verizon highlights, companies must ensure that their vendors, suppliers and subcontractors are adhering to open source software license requirements as well. Companies should require their vendors to sign agreements indicating that they are in full compliance with all open source software license requirements to the extent open source software applications have been modified and included in a product distributed to customers. Such agreements with vendor firms may give companies a layer of protection should they be sued for an open source software license violation.

Open Source Compliance Officer

Actiontec has become the latest defendant forced to hire an Open Source Software Compliance Officer. This is a significant concession for a company – and an expensive one, too. Typically, open source software compliance is handled within the corporate legal department, or by a company's technology officer. Actiontec must now hire a dedicated individual whose primary function is to ensure Actiontec's compliance with open source software license requirements. In similar lawsuits, the SFLC forced the appointment of Open Source Software Compliance Officers at Monsoon Media, Xterasys Corporation and High-Gain Antennas.

These requirements should stand as yet another warning sign to companies, large and small, that the SFLC will not ignore violations of the GPL and that it has the ability to successfully enforce the GPL against infringers in court. Those that fail to comply may be taking costly risks.

The latest version of the GPL, Version 3, which was updated in 2007, can be [viewed here](#).