

FOSS License Compliance and License Enforcement in Germany

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Agenda

License Compliance as part of the Compliance Process

License Conditions and Obligations of the Licensee

License Violations - Copyright Infringement

Motivation for GPL Enforcement

Procedure of GPL Enforcement in Germany

License Compliance

License compliance is a part of the general compliance process in a company

Goal is to ensure the lawful distribution of products

Complying with license conditions of FOSS is as important as the compliance with traditional license conditions

Compliance has to be considered at all levels of a company's activities: purchase of components, development of software and distribution

License Conditions

No license fees but typical obligations in FOSS licenses

Providing the license texts (electronically or in paper form) to enable the user to receive a license himself

Providing the complete corresponding source code to allow the user to modify the software

Providing copyright notices to show who has developed the software

License Conditions

Providing the disclaimer to avoid liability of the (unpaid) developer

Copyleft licenses (e.g. the GPL): safeguarding the free use of the software by licensing modifications under the original FOSS license

Copyleft clause in sec. 2b GPLv2:

„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.“

License Conditions

Copyleft clauses are relevant with regard to

- a) licensing of own developments,
- b) license compatibility if components under more than one FOSS license are combined in one product

License Violations

Rights under FOSS licenses are conditioned

Automatic termination clause of the GPLv2:

„You may not copy, modify, sublicense, or distribute the Program except as expressly provided under this License. Any attempt otherwise to copy, modify, sublicense or distribute the Program is void, and will automatically terminate your rights under this License.“

License violations lead to copyright infringements – a powerful tool in enforcement cases

Motivation for GPL Enforcement

Compliance of the software industry

Missing credit for the free software community

Fairness: industry that is aware of its own copyrights shall respect the copyright of free software authors

Interest in concrete source code

Motivation for GPL Enforcement

gpl-violations.org



lists.gpl-violations.org | ftp.gpl-devices.org | gnumonks.org | netfilter.org | fsfeurope.org | fsf.org

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GNU GPL

FAQs

[Vendor FAQ](#)
[Source Code Release FAQ](#)
[gpl-violations.org FAQ](#)

The gpl-violations.org project

The gpl-violations.org project?

The gpl-violations.org project tries to raise public awareness about past and present infringing use(r)s of [GPL licensed software](#).

The ultimate goal is to make vendors of GPL licensed software understand that [GPL](#) is not public domain, and that there are license conditions that are to be fulfilled.

The project wants to act as information and communication platform between all parties involved with licensing of free software:

- authors and copyright holders
- vendors, OEM's, VAR's
- users

Please note that this homepage is not maintained very well. We're so busy in both technically and legally resolving GPL violations that there's hardly any time left to keep this page up-to-date.

We're actually [looking for a volunteer webmaster skilled in working with docbook-website](#).

Procedure of GPL Enforcement in Germany

Cease and desist letter to the violator

Declaration to cease and desist and ancillary claims (information about distribution chain, source code, costs of enforcement)

Settlement in most cases

Grace period if the non-compliant company is unable to establish compliance – donation to community projects

Procedure of GPL Enforcement in Germany

Demand for a preliminary injunction (within a deadline of one month after obtaining knowledge of the infringement)

Competent courts: all German District Courts if the product is sold all over Germany

Preliminary injunctions are often granted within a few days and without oral hearing – defendant must actively object, if he does not accept the ruling.

Procedure of GPL Enforcement in Germany

Oral hearing in case of an objection

Court provides a decision with reasons

Appeal to the Higher Regional Court possible

New violation: penalty and new cease and desist letter

Procedure of GPL Enforcement in Germany

International enforcement

Distribution from foreign countries to Germany („Skype“)

Enforcement case in France („Free Box“)

Further Information

T. Jaeger – Enforcement of the GNU GPL in Germany and Europe (<http://nbn-resolving.de/urn:nbn:de:0009-29-24190>)

District Court of Munich, 12 July 2007, case 7 O 5245/07 (Welte v. Skype Technologies), available at <http://www.ifross.de/Fremdartikel/LGMuenchenUrteil.pdf>.

District Court of Munich, 19 May 2004, case 21 O 6123/04 (Welte v. Sitecom Deutschland GmbH), available in English translation at http://www.jbb.de/fileadmin/download/judgment_dc_munich_gpl.pdf