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Windows vs. Linux: The Patent Tax

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With tax day approaching in America, we at the Software Freedom Law Center wanted to share some important information about the hidden taxes added to every copy of Microsoft's Windows operating system. If you run a computer using Windows, you're not just paying for the programmers who put the program together and the corporate operations that brought it to market. You're also paying a hidden tax of well over \$20 that Microsoft has had to pay to other patent holders. This is true whether you bought your copy of Windows on CD or pre-installed on a laptop, desktop, or server machine.

While \$20 might not sound like a lot, it adds up pretty quickly. A school with only 50 Windows machines – barely enough for one class of students – is paying \$1,000 of its limited budget in patent tax, rather than buying books or other useful supplies. A government agency with a mere couple hundred Windows machines is paying many thousands of taxpayer dollars in patent tax.

On the other hand, free operating systems based on Linux have never been found guilty of patent infringement, making Linux a patent-tax-free alternative to Windows. Not only do these free software systems have no patent tax, they have no taxes whatsoever, because – like all open source software – they are available to the public at zero cost.

| <u>Operating System</u> | <u>The Patent Tax (per copy)</u> |
|--------------------------------|---|
| Microsoft Windows | \$20 |
| Linux | \$0 |

Patent Payouts

In the last three years, Microsoft has publicly paid out more than four billion dollars to plaintiffs claiming that Microsoft's Windows and Office products infringed their patents. From April 2004 through March 2007, Microsoft paid settlements and court awards of \$1.25 billion to Sun Microsystems, \$536 million to Novell, \$440 million to InterTrust, \$60 million to Burst.com, \$6 million to private inventor Carlos Amado, \$115 million to z4 Technologies, \$74 million to Korean company P&IB, and most recently, \$1.52 billion to Alcatel-Lucent over patents allegedly infringed by Microsoft's software. These payouts exclude several high-profile secret settlements during the same period, such as the 2005 accords reached with AT&T and Alacritel, each of whom was asking for hundreds of millions in damages. They also exclude the billions Microsoft has paid in antitrust awards related to patent issues.

Added to this \$4-billion-plus pile of patent payouts are the enormous legal fees Microsoft has racked up defending those cases. Brad Smith, Microsoft's General Counsel, said in a 2005 interview that the company "typically spend[s] close to US\$100 million annually to defend against an average of 35 – 40 patent lawsuits simultaneously." This means that the company's patent litigation expenses for that three-year period exceed \$4.3 billion: over \$4 billion in payouts, plus \$300 million in legal fees.

Cost To The Customer

How does this bill get split up among Microsoft's customers? Microsoft estimated in 2004 that 600 million Windows machines were deployed worldwide, and anticipated a total of 1 billion machines running Windows by 2010. These numbers are consistent with the figures on Windows XP adoption from 2001 to 2004, which were estimated at 210 million installations. Using this estimate of 200 million new Windows installations every three years, this means that each of the 200 million new Windows machines is on the hook for over \$21.50 in patent taxes, plus their share of the secret settlements Microsoft reached in those three years.

In fact, this number is probably much higher for licensed Windows users in North America and Europe. The Windows numbers from Microsoft are almost certainly inflated, which means a bigger share of patent taxes for each actual user. Customers in Europe and North America pay more for Windows licenses than in less affluent countries, leaving them with a bigger slice of the patent tax pie. And many Windows installations are unlicensed, meaning that those users' share of the patent tax gets passed on to paying customers.

Why Do You Call It A Patent "Tax"?

Patents are granted and enforced by the federal government, who before 1989 did not allow patents on software. In that year, the federal courts declared software algorithms to be patentable, despite the fact that the software industry had been booming without government intervention in the form of patents. Today, software developers continue to pay patent holders for permission to distribute their own programs, and the government continues to enforce this scheme.