

Open Source Risk Management, Inc.
Statement regarding recent comments made by Microsoft CEO
November 19, 2004

Reuters and other news agencies recently reported Microsoft CEO Steve Ballmer making public references to OSRM's Linux Patent Review. Many of the reports included inaccurate statements regarding the material findings of this report. Regardless of the origin of these inaccuracies, whether from Mr. Ballmer's statements or otherwise, OSRM provides the following important clarifications regarding our Linux Patent Review conducted earlier this year.

1. Mr. Ballmer makes a very bold statement by saying "Linux infringes X patents", which is much different than saying "Linux potentially infringes X patents", as the requirement to prove infringement is much stiffer and more difficult than the requirement to simply file a case claiming infringement. As the SCO saga shows, filing a case based on an allegation is one thing, proving the merits of the allegation in court is something completely different.
2. Mr. Ballmer also misconstrues the findings of the OSRM study, which found that Linux potentially, not definitely, infringes 283 untested patents, while not infringing a single court-validated patent. The point of the patent review was actually to eliminate the Fear, Uncertainty and Doubt ('FUD') about Linux's alleged legal problems by attaching a quantifiable measure versus speculation. The number we found is average as similarly sized software might be expected to potentially infringe at least that many patents.
3. Not a single Free and Open Source software program has ever been sued for patent infringement, much less been found to infringe, while proprietary software, has been sued and found guilty of patent infringement. For example, we have Eolas' patent being infringed by Windows and Kodak's patent being infringed by Java. If one believes the proof is in the pudding, that stark contrast shows how Free and Open Source software has much less to worry about from patents than proprietary software.
4. There are no patents that are only infringed by Free and Open Source software, because patents are infringed by specific structure that accomplishes specific functionality. Patents don't care how the infringing article is distributed, be it under an Open Source license, a proprietary license, or not at all. Whether and how software is distributed makes no difference. The bottom line is there's no reason to believe that Windows, Solaris, AIX, or any other functionally similar operating system has any less risk of infringing patents than does Linux.