

# Microsoft launches attack on open source software

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Microsoft Senior Vice President Craig Mundie made a speech on May 3 championing what he called “the commercial software model.” His remarks were particularly directed against the increasingly popular method of providing free access to a programme's source code in a form that clearly reveals how the software works, and so can be altered.

Mundie's speech, published in full on the Internet [1], is generally regarded as Microsoft's response to the growing popularity of the open source Linux operating system. While there are a number of commercial distributions of Linux, such as Red Hat or SuSe, these are all based upon computer code that is “free”. In the world of open source software, “free” means more than being available for no financial cost. It means the freedom to use and alter the source code that makes up the software. This has made Linux an attractive alternative to Microsoft's Windows operating system, particularly for those running web servers. The free availability of the source code, and the thousands of volunteer programmers worldwide who work on its development, mean that any bugs or security holes in Linux are fixed far sooner than those in its Windows counterpart. If a company has access to the source code and a security hole or bug is discovered, it has the possibility of fixing the problem itself; if it does not have the required skills in-house, it can be sure a fix will come along pretty quickly in the public domain.

A desire to undermine the popularity of Linux is no doubt one factor in Mundie's remarks. More fundamentally, however, his speech is an attempt to kill demands by the US Justice Department that Microsoft provide access to the Windows source code. This is the predicted alternative proposal to that of Judge Jackson last year, who ruled that the company should be broken in two, with one part gaining control of the operating system and the other controlling applications and Internet technologies.

Since the installation of the Bush presidency there are indications that political opinion is swinging against a break-up. In order for the appeals court to rule in favour of Microsoft and overturn the proposal of Judge Jackson, the company will have to provide some evidence that it has changed its monopolistic practices. The speech by Mundie should be read in this context.

He begins by telling his audience, and by extension the Justice Department, that Microsoft will continue to hold a strategic place in the US economy. Speaking of the “personal information technology revolution” which began in the early 1980s, Mundie says, “It probably has at least two more decades to go. But it's important that we learn from the lessons of the past year and apply them in order to make the most of the potential that lies ahead.”

Mundie is referring to the recent collapse of a whole number of so-called dot.com companies, whose problem, he asserts, was that they “gave away for free or at least at a loss the very thing they produced that was of greatest value—in the hope that somehow they'd make money selling something else.”

He then says, “Contrast this recent experience with the two decades of economic success that preceded it. The global economy grew in an

unprecedented way in no small measure because of a generation of new companies, of which Microsoft was fortunate to be one. Many or even most of these companies invested heavily in research and development and sold their principal products at prices that covered their costs and generated profits that they reinvested in further research and development.”

Mundie then raises a crucial point, which has been the subject of much debate. He says, “This research and development model, in turn, was almost always based on the importance of intellectual property rights. Whether copyrights, patents or trade secrets, it was this foundation in law that made it possible for companies to raise capital, take risks, focus on the long term, and create sustainable business models.

“Despite the demonstrable success of the computing industry and the IP [Intellectual Property]-based economy, and the clear failure of newer firms that gave away products for free, it's notable that in the past year there has been a broader discussion about whether the ingredients that delivered longstanding economic success can continue to do so... in part this has focused on whether IP protection as we have known it—whether for music, software, or other products—should continue to be a fundamental engine of economic growth.”

Mundie asks the question: “Should an information-based economy protect the intellectual property assets that are driving its growth?” Not surprisingly his answer is “Yes”.

“We emphatically remain committed to a model that protects the intellectual property rights in software and ensures the continued vitality of an independent software sector that generates revenue and will sustain ongoing research and development,” Mundie says.

Mundie's comments are based on the premise that the historical purpose of copyright law was to stimulate and promote the progress of science and the “useful arts,” technology, literature and so on. The constitution of the United States gives Congress the power to, “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

Bruce Perens is the primary author of “The Open Source Definition”[2], the formative document of the Open Source movement. In an interesting paper entitled “Software Patents vs. Free Software”[3], he argues, “we might consider whether or not software patents *are* actually promoting progress, or if they might even be hindering it. Surprisingly, there is *no* hard evidence that software and business method patents promote progress.”

A central theme of the Justice Department case against Microsoft was that the company blocks innovation and progress. Some highlights in Jackson's ruling are:

\* Jackson said the decision by Microsoft to tie the Internet Explorer web browser to Windows was not to benefit consumers or improve the efficiency of the software, “but rather as part of a larger campaign to quash innovation that threatened its monopoly position.”

\* According to Jackson, "Microsoft itself engendered, or at least countenanced, instability and inconsistency by permitting Microsoft-friendly modifications to the desktop and boot sequence, and by releasing updates to Internet Explorer more frequently than it released new versions of Windows."

\* On the subverting of the Java programming language, Jackson concluded: "Microsoft's actions to counter the Java threat went far beyond the development of an attractive alternative to Sun's implementation of the technology. Specifically, Microsoft successfully pressured Intel, which was dependent in many ways upon Microsoft's good graces, to abstain from aiding in Sun's and Netscape's Java development work... Microsoft also deliberately designed its Java development tools so that developers who were opting for portability over performance would nevertheless unwittingly write Java applications that would run only on Windows."

Mundie's claim that the commercial software model is the only viable one is at the heart of Microsoft's philosophy. Moreover, it separated Bill Gates from many of his contemporaries in the early days of the personal computer. Conveniently forgetting that he took the code for his BASIC operating system from the Dartmouth version, which was in the public domain, and used the computer time required to develop an Intel 8800 chip simulator on DEC minicomputers belonging to his employers, Gates developed a purely profit driven concept of software development that went against prevailing trends.

In a 1976 "Open letter to hobbyists", Gates complains that, "As the majority of hobbyists must be aware, most of you steal your software. Hardware must be paid for, but software is something to share. Who cares if the people who worked on it get paid?"

Today Mundie continues in the same vein, complaining that "The OSS [Open Source Software] model leads to a strong possibility of unhealthy 'forking' of a code base, resulting in the development of multiple incompatible versions of programs, weakened interoperability, product instability, and hindering businesses' ability to strategically plan for the future. Furthermore, it has inherent security risks and can force intellectual property into the public domain."

Mundie's technical arguments are easily answered with the refrain, "And Microsoft doesn't?" More important in many respects is the ideological content of his argument. He continues:

"Some of the most successful OSS technology is licensed under the GNU General Public License [4] or GPL. The GPL mandates that any software that incorporates source code already licensed under GPL will itself become subject to the GPL. When the resulting software product is distributed, its creator must make the entire source code base freely available to everyone, at no additional charge. This viral aspect of the GPL poses a threat to the intellectual property of any organisation making use of it."

Mundie unwittingly identifies the essential conflict between the profit system and social progress. He is incapable of understanding that the value of OSS lies precisely in the fact that all players are equal. The purpose of the GPL is to ensure that commercial software developers do not rip off the hard work of volunteer programmers.

Again Mundie complains, "This effectively makes it impossible for commercial software companies to include source code that is licensed under the GPL into their products, since by doing so, they are constrained to give away the fruits of their labour."

In today's world of unrivalled corporate greed, where the measure of success is the size of one's stock portfolio, it is easy to forget that the Microsoft model is not the "natural" order of things. A commercial software sector did not emerge until the mid-1970s. Up to then it had been common practice for programmers to share the products of their labour with no restrictions. The patents subsequently filed by commercial companies in effect stole the intellectual property of the scientists who worked at academic institutions such as the Berkeley campus of the

University of California and the Massachusetts Institute of Technology (MIT), as well as at commercial research centres such as Bell Labs and Xerox's Palo Alto Research Center (PARC).

Responding to Mundie's remarks, the originator of the Linux operating system, Linus Torvalds [5], said:

"When Mundie wants you to think about all the work that companies have done in order to get patents, he also wants you to *forget* about all the work done by people like Einstein, Rutherford, Bohr, Leonardo da Vinci and a lot of other people who have done a lot more for humanity than most companies have ever done.

"And these people did it for the love of the art, not for some petty 'intellectual property rights'. Yet Mundie, with a straight face, claims that those intellectual property rights are the thing that drives science and technology. He seems to think that MS [Microsoft] has done more for the US economy than the discovery of the electron ever did."

Torvalds asks if Mundie has ever heard of Sir Isaac Newton, pointing out that Newton acknowledged his achievements with the words, "If I have been able to see further, it was only because I stood on the shoulders of giants."

"One of the greatest scientists of our time, having done more for modern technology (and thus, by the way, for the modern economy) than Microsoft will *ever* do, acknowledged the fact that he did so by being able to use the knowledge (what we now call 'intellectual property') gathered by others."

In opposition to OSS, Microsoft has developed what it calls the "Shared Source Philosophy". Co-founder and president of the Open Source Initiative, Eric Raymond, described this as "a counterfeit, a trick, a scam. It's aimed at recruiting free labour for Microsoft without giving the outside contributors any stake in or control of the results of their effort. In true open source, all parties are equal. When I give you my software under an open-source license, you have exactly the same rights as I do. That's what I trade you in return for your help in testing and improving the software. That's the voluntary cooperation that built the Internet."

Having initially underestimated the impact of the Internet upon personal computing, Microsoft is now in the process of reorienting its entire business towards it. The company's much publicised .NET strategy proposes a set of Web services that are user-centric rather than device-centric. Shifting from a concentration on software to run on a particular configuration of hardware, Microsoft is in the process of shifting its business applications over to the Internet, where they hope to charge an ongoing subscription fee for using their software.

According to Mundie, "People will have control over how, when and what information is delivered to them. Computers, devices and services will be able to collaborate directly with each other and businesses will be able to offer their products and services in a way that lets customers embed them in their usage of the Web at their discretion."

For this strategy to succeed, Microsoft must establish itself in the Internet server market, where it is presently weak. For all its claims to a newfound belief in "openness", it will seek to do this through subverting more open technologies.

The Open Source Movement has correctly identified how patents and copyright are being employed by major corporations such as Microsoft to stifle any independent creative initiative that threatens their monopolistic position. But this cannot be adequately redressed purely at the level of patent and copyright law. The argument for an open source approach to technology and science, correctly understood, is one favouring the social ownership of the means of production, both intellectual and physical. Despite the outstanding contribution made by this or that individual in any particular field, the productive resources are the culmination of the creative efforts of all humanity. It is the limitations placed upon them by the market and the profit system that must be replaced with a system based upon democratic control and their harmonious application to solve

the great problems that confront mankind. Only in this way can the shackles placed by private ownership on the shoulders of Newton's metaphorical giants be thrown off once and for all.

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**Notes:**

1. Prepared Text of Remarks by Craig Mundie, Microsoft Senior Vice President *The Commercial Software Model* The New York University Stern School of Business - May 3, 2001
2. <http://www.microsoft.com/presspass/exec/craig/05-03sharedsource.asp>
3. The Open Source Definition is available at <http://www.perens.com/OSD.html>
4. Software Patents vs. Free Software is available at <http://perens.com/Articles/Patents.html>
5. The GNU General Public License (GPL) can be found at <http://www.gnu.org/copyleft/gpl.html>
6. Microsoft's Attack on Open Source: Linus Torvalds Replies <http://web.siliconvalley.com/content/sv/2001/05/03/opinion/dgillmor/weblog/torvalds.htm>



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