

Free Software Matters: Microsoft, Antitrust, and the Movement

Eben Moglen*

July 30, 2000

In last month's column I showed why the monopolistic dominance of one company's proprietary operating system was a blessing to the multimedia production companies now seeking to control distribution of music and video through the network. Their approach to the new social conditions produced by the Internet is to try to create a "leak-proof pipe" from the studio where music or a movie is made right to the eyeball or the eardrum of the consumer. Digital transmission of their goods reduces their costs drastically (in fact almost to zero), but they worry that copying of their content at the point of consumption could also drastically reduce their sales.

Enter Microsoft. As a monopoly, Microsoft was a perfect partner for the content industries. The Windows platform was under a single company's control: Microsoft guaranteed that no one could change Windows so that every sound sent to the soundcard and every image sent to the display was saved on a hard drive or emailed to a friend. Microsoft didn't allow anyone else to understand or modify the Windows kernel for its own business reasons, but those reasons also provided the music and movie industries with confidence that their content wouldn't be under the end-user's control.

Thus Microsoft's monopoly on the desktop was an alternative to the content industries' own attempt to control the exhibition of their new digital wares. In the US and Europe, antitrust or competition law has traditionally viewed suspiciously any attempt by large-scale producers of copyrighted content to control exhibition. The US government, for example, litigated for years in the 1940s against the large US movie studios to force them to divest themselves of chains of movie theaters they had bought, and

*Eben Moglen is professor of law and legal history at Columbia University Law School. He serves without fee as General Counsel of the Free Software Foundation. You can read more of his writing at <http://moglen.law.columbia.edu>

to prevent them from imposing certain business practices on the theaters they didn't own.

But once the Microsoft monopoly loses its control over the desktop, the content producers will have lost their best protector. A free software Linux DVD player, as I pointed out last month, can be modified by its users to save the movie being played. The same is true with free software players for streaming audio, and so on. Thus the music and movie industries find themselves in the US courts trying to prevent the development and distribution of free software players for the new audiovisual products.

And as we learned this spring and summer, the Microsoft monopoly is never coming back. The results of the antitrust lawsuit against Microsoft are already clear: the US government and all the private parties aggrieved with Microsoft have now gained more than enough leverage to break its hold on the desktop. Undoubtedly, however, the real beneficiary will be the free software movement. Windows NT and Linux are already the only two operating systems in the world gaining market share; for reasons I shall be writing about next month, the Linux kernel is poised to eclipse the entire Microsoft product line on machines from the smallest computer devices in the world to the very largest.

The US government didn't design its antitrust action around free software. The remedies the Justice Department proposed, and which the trial court accepted, are not specifically arranged to increase competition between Microsoft and free software. If Microsoft is divided into an operating system company and an applications company, the government's theory says, the applications company will have an incentive to market Excel and Word (for example) for use with Linux. This would certainly facilitate large-scale migration to Linux, particularly in corporate environments already standardized on the proprietary data formats Microsoft adopted for its office products. But there are already numerous office suites for Linux, all of them profiting from the rapid improvement free software development involves, and all compatible with the Microsoft Office data formats.

Other aspects of the antitrust remedy imposed in Judge Jackson's court may prove to be much more helpful and significant. The requirement to disclose the content of application program interfaces (APIs) for Windows will make it possible to distribute WINE, the Windows emulator, without fear of legal counterstrikes by Microsoft. What WINE does is to allow *any* Windows program to run directly under X Windows and the Linux kernel. So you can go down to the corner software shop, take home any shrink-wrapped Windows application, and run it directly out of the box. WINE has been under development for years, and already runs hundreds

of commercial Windows applications without problems. But although it was written by programmers who had absolutely no access to internal Microsoft information, or information distributed under restrictive licenses or non-disclosure agreements, I had always been concerned—as the chief legal strategist for the free software movement—that its full public release would stimulate unjustified legal action by Microsoft that would be expensive to counter. The outcome of the antitrust suit may now dispel that concern.

This, more than the other more publicized aspects of the antitrust judgment against Microsoft will change the shape of the world software industry. If all Windows applications can run unchanged under X Windows and Linux, there's little or no remaining reason for any user, anywhere, not to use a better product that can be acquired at no cost. And there is particularly no reason for hardware sellers to add the expensive Windows operating system to their machines if the free one can be used perfectly well instead, thus increasing their profit margins. Within the next few years all personal computers will be delivered by default with a free operating system on them, and if you want Windows for any reason you'll have to pay extra. Windows, in such an environment, is doomed.

Which brings us back to the poor movie and music industries. Their business model for the near future was based on the assumption that Microsoft's control of the desktop would be exercised in their favor. Now they are faced with an avalanche of programs that help users share music and video among themselves, as well as an operating system that is fully under the user's control, and therefore cannot be counted upon to spy on users, report users' behavior, or prevent users from making and redistributing digital copies of the music and video taken from the net. Free software now constitutes the greatest threat to the business models not only of the world's most powerful programming company, but all the other makers of proprietary "cultural software" as well. The next couple of years are going to be very exciting, which is why Free Software Matters.