

EXHIBIT B

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Bruce Perens

11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO**

15
16 OPEN SOURCE SECURITY, INC., and
BRADLEY SPENGLER,

17 Plaintiffs,

18 v.

19 BRUCE PERENS, and Does 1-50,

20 Defendants.

Case No. 3:17-cv-04002-LB

**SUPPLEMENTAL DECLARATION OF
BRUCE PERENS IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
OPEN SOURCE SECURITY, INC.'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Hearing Date: December 14, 2017

Time: 9:30 a.m.

Location: Courtroom C, 15th Floor

Judge: Hon. Laurel Beeler

SUPPLEMENTAL DECLARATION OF BRUCE PERENS

I, Bruce Perens, declare as follows:

1. I am an individual and a named defendant in this action. I submit this declaration in response to OSS's incorrect characterizations in its Reply (ECF No. 37) of my October 31, 2017 Declaration (ECF No. 32-3), and to correct my October 31 Declaration and provide additional information regarding the precise timing of when I first received and reviewed the full Grsecurity Agreement. Unless stated otherwise, I have personal knowledge and am informed of the facts stated herein and, if called to testify, I could and would testify completely hereto.

2. Plaintiff's Reply Memorandum in Support of its Partial Motion for Summary Judgment asserts that a comment I posted on the website Slashdot on or around July 9, 2017 at 5:09 p.m. PDT "admitt[ed] that there was no problem with the Grsecurity Agreement as it relates to the GPL." Reply at 4. In that comment, I stated, in part: "The problem isn't with the text there. It's with what else they have told their customers. It doesn't even have to be in writing." October 31 Drummond Hansen Decl. Ex. A at 11. Plaintiff's Reply also contends that I now "admit[] that [I] understood that the Grsecurity Agreement did not violate the GPLv2" before posting my July 9, 5:09 p.m. comment because my October 31 Declaration "does not dispute or attempt to clarify what [I] meant by 'text' or 'there.'" Reply at 3-4. Plaintiff's Reply also misconstrues my statement in my October 31 Declaration regarding when I "first" read the Slashdot commenter and suggests that my "silence" about when I reviewed it for the "second" time means that I had read the Grsecurity Agreement before my 5:09 p.m. post. Reply at 3-4.

3. Plaintiff misconstrues my comments. As I stated in my October 31 Declaration, when I posted my July 9, 5:09 p.m. comment, I was responding to a comment posted by a reader roughly 10 minutes earlier, around 4:58 p.m. PDT, which stated in part:

I've had a look over their agreement here [grsecurity.net], and there is nothing to prevent redistribution of a patch under the terms and conditions of the GPLv2. It states that if it a patch is distributed *outside of the terms of the GPLv2*, then access to *further patches in the future* (not the patch provided) will be denied on a works for hire basis.

1 October 31 Perens Decl. ¶ 10 (emphasis in original); *see also* October 31 Drummond
2 Hansen Decl. Ex. A at 11. As stated in paragraph 10 of my October 31 Declaration and as
3 further supported by the exhibits attached to this Supplemental Declaration, I had not yet
4 seen the Grsecurity Agreement when I posted my July 9, 5:09 p.m. comment, nor had I
5 realized that the 4:58 p.m. comment I was responding to included a link to the Agreement.
6 I did not, as Plaintiff's Reply suggests, read the Agreement as part of a "second" or "third"
7 review of the commenter's post before responding 10 minutes later.

8 4. In the portion of my July 9, 5:09 p.m. comment that reads "The problem isn't with
9 the text there," I was referring to the portion of the other poster's July 9, 4:58 p.m. comment that
10 purported to quote or paraphrase the Grsecurity Agreement. As explained in paragraph 10 of my
11 October 31 Declaration, because I understood from email lists that Plaintiff was communicating
12 terms to its customers that limited customers' ability to redistribute software, I responded to
13 indicate my opinion that communicating such restrictions to customers violates the GPL
14 regardless of whether those terms appear in writing. October 31 Perens Decl. ¶ 10. My intention,
15 and the plain meaning of my statement, was that OSS's restrictions violate the GPL, regardless of
16 whether their restrictions are in writing.

17 5. In paragraph 12 of my October 31 Declaration, I stated, "Later that evening, when
18 I reviewed the text of the Stable Patch Access Agreement for myself, I determined that the
19 Agreement did in fact include a written term that imposed restrictions consistent with the reports I
20 had read." This referred to the evening of July 9, 2017. After reviewing OSS's Reply, to respond
21 to OSS's incorrect suggestion that I had reviewed the Grsecurity Agreement before my July 9th
22 post, I searched my emails to see whether I could determine definitively when I first received and
23 reviewed the full Grsecurity Agreement. I located emails demonstrating that I received the
24 Agreement the next morning, on July 10.

25 6. Attached as **Exhibit 1** is a copy of an email sent to me on or around July 10, 2017
26 at 4:01 a.m. PDT, which quoted the Grsecurity Agreement's non-redistribution clause and
27 attached a copy of the full Agreement (**Exhibit 2**).
28

1 7. Attached as **Exhibit 3** is a copy of my response to that email, sent on or around
2 July 10 at 8:12 a.m. PDT, in which I replied that I had not had a copy of the Agreement before. I
3 also expressed surprise that OSS would put such restrictions in writing. I have also determined
4 that my email response of July 10 is publicly available at the URL [https://lists.debian.org/debian-](https://lists.debian.org/debian-user/2017/07/msg00653.html)
5 [user/2017/07/msg00653.html](https://lists.debian.org/debian-user/2017/07/msg00653.html), as part of the same “thread” as the July 14 email that is attached as
6 Exhibit 9 to Plaintiff’s First Amended Complaint.

7 8. After reviewing the 4:01 a.m. email and the attached Agreement, I determined that
8 the problematic terms were in fact written in the Grsecurity Agreement itself and updated my
9 blog to say so. I updated my blog post to provide a link to the Agreement and to state that
10 “[u]nder [Grsecurity’s] Stable Patch Access Agreement, customers are warned that if they
11 redistribute the Grsecurity patch, as would be their right under the GPL, that they will be assessed
12 a *penalty*.” See First Amended Complaint Ex. 2 (updated blog post); Ex. 10 at 3, line 84
13 (showing update time of July 10, 2017 at 8:11 a.m. PDT). I stated in my 8:12 a.m. email that I
14 had done so. See Exhibit 2.

15
16 I declare under penalty of perjury under the laws of the United States that the foregoing is
17 true and correct, and that this declaration was executed this 22th day of November 2017 in
18 BERKELEY, California.

19
20 By: 

21 Bruce Perens
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EXHIBIT 1



Bruce Perens <bruce@perens.com>

Fwd: Re: [kernel-hardening] Why does no one care that Brad Spengler of GRSecurity is blatantly violating the intention of the rightsholders to the Linux Kernel?

aconcernedfossdev@airmail.cc

Mon, Jul 10, 2017 at
4:01 AM

<aconcernedfossdev@airmail.cc>

To: Bruce Perens <bruce@perens.com>

Cc: rms@gnu.org, debian-user@lists.debian.org, Eric Raymond
<esr@thyrsus.com>, moglen@columbia.edu, bkuhn@sfconservancy.org

This may also be of interest:

From GRSecurity's "Stable Patch Agreement":

"Notwithstanding these rights and obligations, the User acknowledges that redistribution of the provided stable patches or changelogs outside of the explicit obligations under the GPL to User's customers will result in termination of access to future updates of grsecurity stable patches and changelogs."

IE: If you choose to redistribute, other than in the case of a demand made by a user, retaliation will occur. They even put it in writing.

PDF attached.



grsecstablepatchaccessagreement_additionalterms.pdf

43K

EXHIBIT 2



(/index.php)

Stable Patch Access Agreement

Last updated: 10/02/2016

This Stable Patch Access Agreement ("Agreement") allows access to the stable versions of grsecurity® kernel patches. An authorized user includes the individual(s) provided with login credentials directly by Open Source Security, Inc ("the Company"). or others within the organization involved in the stable patch subscription identified to Open Source Security, Inc. (collectively, "the User")

Confidentiality

The User agrees that the User is responsible for maintaining the confidentiality of their login credentials. Disclosure of these credentials is prohibited except as allowed by this agreement.

Redistribution

The User has all rights and obligations granted by grsecurity's software license, version 2 of the GNU GPL. These rights and obligations are listed at <http://www.gnu.org/licenses/old-licenses/gpl-2.0.en.html> (<http://www.gnu.org/licenses/old-licenses/gpl-2.0.en.html>).

Notwithstanding these rights and obligations, the User acknowledges that redistribution of the provided stable patches or changelogs outside of the explicit obligations under the GPL to User's customers will result in termination of access to **future** updates of grsecurity stable patches and changelogs.

Making and using copies of the stable patches within a single organization is not considered redistribution (see the GPL FAQ here: <https://www.gnu.org/licenses/old-licenses/gpl-2.0-faq.en.html#InternalDistribution> (<https://www.gnu.org/licenses/old-licenses/gpl-2.0->

If the User has received pricing for the stable patches on a specific product, use of the patches on additional products without the consent of the Company will result in termination of access to **future** updates of grsecurity stable patches and changelogs.

Works Made For Hire

No work performed in the process of grsecurity stable patch maintenance or changes made to the grsecurity patches as part of a support agreement shall be considered "works made for hire". Unless a specific arrangement has been put forth otherwise by the Company, the Company retains all Intellectual Property rights and will publish these changes under the GPL to all customers.

Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Pennsylvania without regard to the conflicts of laws provisions thereof. Exclusive jurisdiction and venue for any action arising under this Agreement is in the federal and state courts having jurisdiction over The Company's principal office, and both parties hereby consent to such jurisdiction and venue for this purpose.

Termination

While the Company aims only to terminate access to the stable patches in the event of willful violation of the terms in this agreement, we reserve the right to revoke access to the stable patches and changelogs at any time for any reason. In the event of termination, the Company will at its own discretion refund payment for any remaining pre-paid period.

Waiver of Liability

The Company is not liable for any claims, damages, costs, expenses or loss of any kind that may be made or incurred as a result of either the User's access or revocation of access to grsecurity stable patches.

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GET IN TOUCH

949-424-7732 (tel:949-424-7732)

contact@grsecurity.net (mailto:contact@grsecurity.net)

Trademark Policy (trademark_policy.php)

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grsecurity is a registered trademark of Open Source Security, Inc. Linux is the registered trademark of Linus Torvalds.

EXHIBIT 3



Bruce Perens <bruce@perens.com>

Fwd: Re: [kernel-hardening] Why does no one care that Brad Spengler of GRSecurity is blatantly violating the intention of the rightsholders to the Linux Kernel?

Bruce Perens <bruce@perens.com>

Mon, Jul 10, 2017 at 8:12 AM

To: aconcernedfossdev@airmail.cc

Cc: rms@gnu.org, debian-user@lists.debian.org, Eric Raymond
<esr@thyrsus.com>, moglen@columbia.edu, bkuhn@sfconservancy.org

Thank you. I did not have a copy of the Grsecurity Stable Patch Access Agreement before, and I've linked it to [my article](#). IMO it's quite imprudent of them to put down in writing how they restrict your GPL rights.