

Microsoft & Novell Interoperability Collaboration

Published: November 2, 2006 | Updated: November 2, 2006

Novell and Microsoft have announced an historic bridging of the divide between open source and proprietary software. They have signed three related agreements which, taken together, will greatly enhance interoperability between Linux and Windows and give customers greater flexibility in their IT environments.

Components of the Collaboration

- A Technical Cooperation Agreement where Novell and Microsoft will work together in three primary areas to deliver new solutions to customers: virtualization, web services management and document format compatibility.
- A Patent Cooperation Agreement where Microsoft and Novell provide patent coverage for their respective customers, giving customers peace of mind regarding intellectual property issues.
- Through a business cooperation agreement, Novell and Microsoft are committing to dedicate marketing and sales resources to promote joint solutions
- Commitments to the non-commercial OSS community

Technical Cooperation Agreement - Microsoft & Novell Interoperability Collaboration

Published: November 2, 2006 | Updated: November 2, 2006

The two companies will create a joint research facility at which Microsoft and Novell technical experts will architect and test new software solutions and work with customers and the community to build and support these technologies. The agreement between Microsoft and Novell focuses on three technical areas that provide important value and choice to the market:

- **Virtualization.** Virtualization is one of the most important trends in the industry. Customers tell us that virtualization is one way they can consolidate and more easily manage rapidly growing server workloads and their large set of server applications. Microsoft and Novell will jointly develop the most compelling virtualization offering in the market for Linux and Windows.
- **Web Services for managing physical and virtual servers.** Web Services and service oriented architectures continue to be one of the defining ways software companies can deliver greater value to customers. Microsoft and Novell will undertake work to make it easier for customers to manage mixed Windows and SUSE Linux Enterprise environments and to make it easier for customers to federate Microsoft Active Directory with Novell eDirectory.
- **Document Format Compatibility.** Microsoft and Novell have been focusing on ways to improve interoperability between office productivity applications. The two companies will now work together on ways for OpenOffice and Microsoft Office users to best share documents and both will take steps to make translators available to improve interoperability between Open XML and OpenDocument Formats.

Covenant to Customers

Microsoft, on behalf of itself and its Subsidiaries (collectively "Microsoft"), hereby covenants not to sue Novell's Customers and Novell's Subsidiaries' Customers for infringement under Covered Patents of Microsoft on account of a such Customers' use of specific copies of a Covered Product as distributed by Novell or its Subsidiaries (collectively "Novell") for which Novell has received Revenue (directly or indirectly) for such specific copies; provided the foregoing covenant is limited to use by a Customer of Novell (i) of such specific copies that are authorized by Novell in consideration for such Revenue, and (ii) within the scope authorized by Novell in consideration for

such Revenue. For the avoidance of doubt, the "received Revenue" requirement above is deemed satisfied with respect to such Customer receiving from Novell a free update to a component of a specific copy of a Covered Product for which Novell has previously received Revenue, but is not satisfied with respect to such Customer receiving a free upgrade or a new version of such specific copy unless Novell has received Revenue for such upgrade or new version.

For specific copies of Covered Products distributed by Novel for Revenue before the end of the Term, the foregoing covenant shall apply as to all Covered Patents, including Captured Patents. For specific copies of Covered Products distributed by Novell for Revenue after the end of the Term, the foregoing covenant shall apply only as to Captured Patents.

Also, the foregoing covenant will apply to customers' and developers' use of copies of Covered Products distributed by Novell that are in development (including, without limitation, work in process; trial, alpha, beta and release candidate versions; and other versions of products intended for but not yet generally released for Revenue on a commercial basis), even if Novell does not receive Revenue in connection therewith, provided that such copies are solely provided for development, testing or evaluation purposes and any support thereof, if any, continues for no longer than one-hundred eighty (180) days from distribution. In any case, the covenant granted pursuant to this paragraph shall expire as to such customers and developers One-Hundred Eighty (180) days from distribution to such covered customers and developers.

Microsoft reserves the right to update (including discontinue) the foregoing covenant pursuant to the terms of the Patent Cooperation Agreement between Novell and Microsoft that was publicly announced on November 2, 2006; however, the covenant will continue as to specific copies of Covered Products distributed by Microsoft for Revenue before the end of the Term.

Definitions – Covenant to Customers

"Captured Patents" means Covered Patents entitled, in whole or in part, to an effective filing date on or before January 1, 2001 (i) which a granting party or any of its Subsidiaries as the Effective Date now or hereafter during the Term owns or controls, or (ii) under which (and to the extent to which) a granting party or any of its Subsidiaries now or hereafter during the Term has the ability or right to grant a covenant not to sue or other freedom from suit to the other party or any of the other party's Subsidiaries.

"Covered Products" of a Party means all products and services sold, licensed, supplied, distributed or otherwise made available by such Party except for Foundry Products, Clone Products and Other Excluded Products (collectively, "Excluded Products").

“Covered Patents” means Patents entitled, in whole or in part, to an effective filing date on or before January 1, 2012, (i) which a granting party or any of its Subsidiaries now or hereafter during the Term owns or controls, or (ii) under which (and to the extent to which) a granting party or any of its Subsidiaries now or hereafter during the Term has the ability or right to grant a release, covenant not to sue or other freedom from suit. Covered Patents do not include Extendible Third Party Patents.

“Covenanted Customers” means an enterprise or individual that utilizes a specific copy of a Covered Product for its intended purpose as authorized by a Party in consideration for Revenue (directly or indirectly) to such Party. Enterprises or individuals are not Customers when they (1) resell, license, supply, distribute or otherwise make available to third parties additional copies of the specific cop(ies) of a Covered Product they otherwise utilize as a Customer; or (2) resell, license, supply, or distribute the output of SDKs or embedded developer kits they utilize as a Customer. For avoidance of doubt, an enterprise or individual cannot qualify both as a Customer and Distributor for use of the same copy of a Covered Product.

“Party” means either Microsoft or Novell and their respective Subsidiaries.

“Revenue” means any consideration to a Party that is reasonably attributable to Covered Products. Revenue includes without limitation consideration for any (i) sale or license of Covered Products or the sale or license of the services of Covered Products, (ii) warranties, indemnification or updates for Covered Products, (iii) maintenance, upgrades, upgrade protection, service, premium service packages, subscription, consulting, installation and support contracts for Covered Products, (iv) user or device access rights to Covered Products, and (v) hosting by a Party of Covered Products for the benefit of third parties.

“Subsidiary” means any entity (a) more than fifty percent (50%) of whose outstanding shares or securities representing the right to vote for the election of directors or other managing authority are, now or hereafter, owned or controlled, directly or indirectly, by a party, but such entity shall be considered a Subsidiary only so long as such ownership or control exists; or (b) which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, but more than fifty percent (50%) of whose ownership interest representing the right to make the decisions for such entity is, now or hereafter, owned or controlled, directly or indirectly, by a party, but such entity shall be considered a Subsidiary only so long as such ownership or control exists.

“Term” means the period beginning on the Effective Date and ending on January 1, 2012, unless terminated earlier.

Microsoft's Patent Pledge for Individual Contributors to openSUSE.org

From time to time, individual developers wish to contribute their authored code to openSUSE.org projects. It is Microsoft's intent that this pledge be legally binding and enforceable as to such individual contributors according to the terms below.

Non-Assertion of Patents Pledge

Microsoft hereby covenants not to assert Microsoft Patents against each Individual Contributor (also referred to as "You") for Your distribution of Your personally authored original work ("Original Work") directly to openSUSE.org, but only if, and to the extent, (i) Your Original Work becomes part of SUSE Linux, SUSE Linux Enterprise Desktop or SUSE Linux Enterprise Server, and (ii) You ensure that as a result of Your contribution, openSUSE.org, and all further recipients of Your Original Work, do not receive any licenses, covenants or any other rights under any Microsoft intellectual property. This pledge is personal to You and does not apply to any use or distribution of Your Original Work by others.

There are a variety of ways to satisfy the requirement under section (ii) above. For example, one way to satisfy the requirement under US law is for openSUSE.org to include the following provision as is in its binding contribution agreement with You:

openSUSE.org agrees that as a condition of receiving the attached contribution of Your Original Work, openSUSE.org does not receive from You the contributor any licenses, covenants or any other rights under any Microsoft intellectual property with respect to that Original Work, and openSUSE.org will ensure that all further recipients of this Original Work will be subject to this same condition. "Original Work" has the meaning as set forth in Microsoft's Patents Pledge for Individual Contributors to openSUSE.org.

An "Individual Contributor" is an individual open source software developer (and not any corporation, partnership or other legal entity). All Microsoft's utility patents worldwide are subject to this pledge to the extent they are owned or controlled by Microsoft or its majority owned subsidiaries.

Reservation of Rights

Microsoft reserves the right to terminate and revoke this pledge to You, as of the date granted, if You or an entity that You control asserts a patent infringement claim against a Microsoft product, service or technology.

Microsoft further reserves the right to terminate this pledge and revoke this pledge to You upon the expiration or termination of that certain patent agreement entered into by and between Microsoft and Novell Inc., dated as of November 2, 2006.

In addition, Microsoft reserves the right to prospectively update and revise the terms of this pledge, for example to accommodate applicable laws, rules, orders or regulations. The rights provided under this pledge are personal to You and are not for the benefit of others. All rights not expressly granted in this pledge are reserved by Microsoft.

Microsoft's Patent Pledge for Non-Compensated Developers

Many software developers, often referred to as "hobbyists," write code not with the expectation of making money, but because they enjoy solving technical challenges and participating in a community of enthusiasts who recognize and encourage one another's talents. One such community of hobbyist developers participate in the development of open source software. To further encourage these efforts, this pledge provides non-compensated individual hobbyist developers royalty-free use of Microsoft patents as set forth below.

It is Microsoft's intent that this pledge be legally binding and enforceable as to individual hobbyist developers according to the terms below.

Non-Assertion of Patents Pledge

Microsoft hereby covenants not to assert Microsoft Patents against each Non-Compensated Individual Hobbyist Developer (also referred to as "You") for Your personal creation of an originally authored work ("Original Work") and personal use of Your Original Work. This pledge is personal to You and does not apply to the use of Your Original Work by others or to the distribution of Your Original Work by You or others. A "Non-Compensated Individual Hobbyist Developer" is an individual software developer (i.e., a person and not any corporation, partnership or other legal entity), including a developer of open source software, who receives no monetary payment or any other forms of consideration that can be valued monetarily for their creation of their Original Works. The fact that You may be employed as a software developer by, and receive a salary from, a corporation, partnership or other legal entity, does not disqualify You from treatment as a "Non-Compensated Individual Hobbyist Developer" under this pledge, provided Your activities related to the creation of Your Original Work are performed during Your free time and outside the scope of Your employment. The Microsoft Patents subject to this pledge are all patents issued world-wide to the extent they are owned or controlled by Microsoft or its majority owned subsidiaries. For additional information on obtaining rights under Microsoft patents to contribute Your Original Work to an open source project, please see Microsoft's Patent Pledge for Hobbyist Contributors.

Microsoft reserves the right to terminate and revoke this pledge to You, as of the date granted, if You or an entity that You control asserts a patent infringement claim against a Microsoft product, service or technology.

Reservation of Rights

Microsoft further reserves the right to prospectively update and revise the terms of this pledge, for example to accommodate applicable laws, rules,

orders or regulations. The rights provided under this pledge are personal to You and are not for the benefit of others. All rights not expressly granted in this pledge are reserved by Microsoft.

Frequently Asked Questions - Microsoft & Novell Interoperability Collaboration

Published: November 2, 2006 | Updated: November 2, 2006

Q. What are you announcing?

Novell and Microsoft are announcing an historic bridging of the divide between open source and proprietary software. They have signed three related agreements which, taken together, will greatly enhance interoperability between Linux and Windows and give customers greater flexibility in their IT environments. Under a technical cooperation agreement, Novell and Microsoft will work together in three primary areas to deliver new solutions to customers: virtualization, web services management and document format compatibility. Under a patent cooperation agreement, Microsoft and Novell provide patent coverage for each others customers, giving customers peace of mind regarding patent issues. Finally, under a business cooperation agreement, Novell and Microsoft are committing to dedicate marketing and sales resources to promote joint solutions.

Q. What does this mean for Linux?

Novell and Microsoft recognize that many customers have, and will continue to have, multiple platforms, including Linux and Windows, in their environments. Customers are asking for highly reliable, secure, and interoperable solutions. Enabling easy and powerful virtualization of Linux on Windows and Windows on Linux is a great step forward towards this goal. Novell will continue to promote Linux as the premier platform for core infrastructure and application services. This deal strengthens Novell's commitment to the community through leading-edge development projects as well as the continued promotion of Linux in the marketplace. Novell recognizes the significant contribution open source developers have made to Linux and their reliance on the General Public License. The patent agreement signed by Novell and Microsoft was designed with the principles and obligations of the GPL in mind. Under this agreement, customers of SUSE Linux Enterprise know they have rights to Microsoft's intellectual property, further encouraging the adoption of Linux in the marketplace.

Q. Will Novell and Microsoft stop competing?

This agreement is focused on building a bridge between business and development models, not removing competition in the marketplace. We will continue to compete in a number of arenas, including the desktop, identity and security management, and systems and resource management. At the product level, Windows and SUSE Linux Enterprise will continue to compete; however, the agreement is focused on making it easier for customers who want to run both Windows and Linux to do so. This is a very common

relationship for large businesses where we simultaneously partner and compete in different areas.

Q. Is this in response to recent events, such as Oracle's announcement about Red Hat?

No. Negotiations on this agreement have been going on for many months. This agreement reflects a joint assessment by Novell and Microsoft that customers will be best served by ensuring Linux and Windows can interoperate effectively. In terms of a possible Oracle move to offer support for SUSE Linux Enterprise, Novell believes customers with heterogeneous networks are best served by an independent operating systems vendor like Novell with broad hardware and software support.

Q. What are the financial benefits to Novell? To Microsoft?

Novell anticipates the agreement will increase demand for SUSE Linux Enterprise, although they are not putting out any formal estimates. Through the improved interoperability and customer indemnification offered as part of this agreement, both Novell and Microsoft anticipate increased business opportunity through both best of breed product solutions and market differentiation.

Q. What are the specifics of the agreement?

Like many commercial transactions, the financial terms of the agreement are not being disclosed at this time.

Under the technical collaboration agreement, the companies will create a joint research facility and pursue new software solutions for virtualization, management, and document format compatibility. These are potentially huge markets – IDC projects the overall market for virtual machine software to be \$1.8 billion by 2010, and the overall market for distributed system management software to be \$10.2 billion by 2010 – and the companies believe their investment in interoperability will make their respective products more attractive to customers.

Under the business collaboration agreement, the companies will pursue a variety of joint marketing activities. In addition, Microsoft will distribute as part of a resale arrangement approximately 70,000 coupons for SUSE Linux Enterprise Server maintenance and support per year so that customers can benefit from the use of the new software solutions developed through the collaborative research effort, as well as a version of Linux that is covered with respect to Microsoft's IP rights.

Under the patent agreement, both companies will make up-front payments in exchange for a release from any potential liability for use of each others patented intellectual property, with a net balancing payment from Microsoft

to Novell reflecting the larger applicable volume of Microsoft's product shipments. Novell will also make running royalty payments based on a percentage of its revenues from open source products.

Q. Does this mean that Microsoft will now sell Linux?

No. However, as part of this agreement, Microsoft and Novell want to ensure our joint customers have the opportunity to take advantage of the improved interoperability and customer indemnification enabled by this agreement. To help promote these new solutions, Microsoft has purchased a quantity of coupons from Novell that entitle the recipient to a 1-year subscription for maintenance and updates to SUSE Linux Enterprise Server. Microsoft will make these coupons available to joint customers who are interested in deploying virtualized Windows on SUSE Linux Enterprise Server, or virtualized SUSE Linux Enterprise Server on Windows.

For customers who have a significant Windows investment and want to add Linux to their IT infrastructure, Microsoft will recommend SUSE Linux Enterprise for Windows-Linux solutions.

Q: What does this mean for customers?

Customers have repeatedly told both Novell and Microsoft that flexibility is an increasingly important part of their data center. At a time when CIOs are being asked to do more with less, and improve utilization, virtualization is a key to solving that problem. Both Novell and Microsoft realize that the data center of the future will have both Linux and Windows as significant platforms. This agreement is all about making those two platforms work together, and providing the enterprise support for that interoperability that customers demand. By working together, Novell and Microsoft enable customers to choose the operating system that best fits their applications and business needs.

Q. Why is the patent agreement important?

The patent agreement demonstrates that Microsoft is willing to enter into agreements that extend its patent protection to open source customers. This is an important foundation in building the bridge between proprietary and open source software.

One of the biggest perceived differences between open and closed source software revolves around intellectual property. Because open source software is developed in a cooperative environment, some have expressed concerns that intellectual property protections could be compromised more easily in open source. Today's agreement between Novell and Microsoft provides confidence on intellectual property for Novell and Microsoft customers. By mutually agreeing not to assert their patent rights against one another's customers, the two companies give customers greater peace of mind

regarding the IP in the solutions they're deploying. Novell and Microsoft believe that this arrangement makes it possible to offer customers the highest level of interoperability with the assurance that both companies stand behind these solutions.

Q. The press release indicates Microsoft is also pledging not to assert its patents against individual, non-commercial open source developers. How is this connected to Novell?

Microsoft and Novell felt it was important to establish a precedent for the individual, non-commercial open source developer community that potential patent litigation need not be a concern. Microsoft is excited to more actively participate in the open source community and Novell is and will continue to be an important enabler for this bridge. For these reasons, both Novell and Microsoft felt it was appropriate to make this pledge for Microsoft not to assert its patents against the non-commercial community.

Q. How will the technical cooperation work?

The two companies will create a joint research facility at which Microsoft and Novell technical experts will architect and test new software solutions and work with customers and the community to build and support these technologies. The agreement between Microsoft and Novell focuses on three technical areas that provide important value and choice to the market:

- **Virtualization.** Virtualization is one of the most important trends in the industry. Customers tell us that virtualization is one way they can consolidate and more easily manage rapidly growing server workloads and their large set of server applications. Microsoft and Novell will jointly develop the most compelling virtualization offering in the market for Linux and Windows.
- **Web Services for managing physical and virtual servers.** Web Services and service oriented architectures continue to be one of the defining ways software companies can deliver greater value to customers. Microsoft and Novell will undertake work to make it easier for customers to manage mixed Windows and SUSE Linux Enterprise environments and to make it easier for customers to federate Microsoft Active Directory with Novell eDirectory.
- **Document Format Compatibility.** Microsoft and Novell have been focusing on ways to improve interoperability between office productivity applications. The two companies will now work together on ways for OpenOffice and Microsoft Office users to best share documents and both will take steps to make translators available to improve interoperability between Open XML and OpenDocument Formats.

Q. What are the main components of the business cooperation agreement?

The business cooperation agreement addresses a series of issues designed to maximize the value of the patent cooperation and technical collaboration agreements, including: marketing, training, support, and sales resources.

Q. By making it easy to run Windows virtualized on Linux, isn't Novell undercutting its own Mono project, which shares a similar goal?

Mono provides developers a way to run applications designed using Microsoft .NET technologies to run on Linux and other platforms. Its main focus is the Linux desktop, where Mono has been leveraged to build a series of new services, including search, music playback, and more. Virtualization focuses on maximizing the value of server hardware by running multiple operating systems. It is used for server consolidation, workload balancing and other corporate needs. So while both approaches are designed to give customers flexibility in their IT systems, their focuses are quite different.

Q: What does the patent agreement cover with regard to Mono and OpenOffice?

Yes, under the patent agreement, customers will receive coverage for Mono, Samba, and OpenOffice as well as .NET and Windows Server. All of these technologies will be improved upon during the 5 years of the agreement and there are some limits on the coverage that would be provided for future technologies added to these offerings. The collaboration framework we have put in place allows us to work on complex subjects such as this where intellectual property and innovation are important parts of the conversation.

Comments on the Microsoft & Novell Interoperability Collaboration

Published: November 2, 2006 | Updated: November 2, 2006

HP

"This technology and business collaboration provides a model that allows Microsoft and Novell to develop new solutions to enable open source and proprietary software to work better together in a mixed source environment. We applaud these two companies for doing the hard work to build a bridge between Window and Linux,"

-- Shane Robison, EVP, Chief Strategy & Technology Officer, Hewlett-Packard Company

State of Delaware

"One of the key challenges in government is IT interoperability. We commend Microsoft and Novell for their collaboration and their efforts to build bridges in the interoperability area, which will help government to better serve our customers, our business community and our citizens,"

-- Thomas Jarrett, Secretary of the Department of Technology/CIO, State of Delaware.

Bell Canada

"This agreement is a positive example of how companies with different business models and approaches to intellectual property can work together. Hopefully this is a model that others in the industry will repeat. Intellectual property is a currency of exchange in the software marketplace and today's announcement is an important step in the continued progress of the IT industry as a whole."

-- Eugene Roman, Group President, Systems and Technologies, Bell Canada

City of Seattle

"The City of Seattle's IT staff supports a number of different operating environments, including Microsoft Windows, Novell NetWare and several varieties of Unix/Linux. All of these environments require separate physical servers, and our data center is running out of space. This new Microsoft-Novell collaboration agreement could allow significant virtualization of servers, reducing the number of physical platforms we'd have to maintain. That, in turn, reduces costs for maintenance, electricity, cooling and space, saving taxpayer dollars, and helping improve of stewardship of the

environment. This helps to meet key goals set by Mayor Greg Nickels in his Climate Action Plan.”

-- Bill Schrier, Chief Technology Officer, City of Seattle

Bitstream

“This announcement validates both open source and proprietary software and is a tremendous development for the IT industry. By addressing open source IP issues and focusing on enabling greater interoperability between their open source and proprietary products, Novell and Microsoft have sent a strong signal to the industry – it’s about customers, collaboration and innovation. Let’s hope others follow their example,”

-- Catherine A. Allen, CEO, Bitstream

Ingram Micro North America

“This collaboration of open source and proprietary software is a win-win for the IT industry and our customers because it provides greater choice when developing comprehensive solutions. This alliance allows resellers to better address the specific needs of their end-user customers -- even highly customized application needs. Congratulations to Microsoft and Novell for listening to customers, putting them first, and taking such a forward-looking approach.”

-- Jodi Honore, Vice President, Vendor Management, Ingram Micro North America

Palamida

“One of the results of the rapid growth of open source software is a world of “mixed code”, IT environments comprised of both commercial and open source software. At Palamida, we are dedicated to assisting our customers with the new intellectual property (IP) compliance, licensing and software asset management issues that result.

From our perspective, today’s announcement from Microsoft and Novell is an important advance in interoperability in this mixed code world – interoperability not only with respect to technical issues, but also to IP issues. This is a major win for customers who will now receive a whole new level of support and assurance in their deployment of mixed code IT environments.”

-- Mark Tolliver, CEO Palamida

Raleys

"In everything we do, we put our customers first. It is heartening to see longtime competitors like Microsoft and Novell do the same for the long term benefit of the IT industry customers. Meaningful collaboration between leading software vendors that builds bridges between proprietary and open source software is necessary for the IT industry. We welcome these initiatives and hope to see others join in."

-- Eric Wilson, SVP and CIO of Raley's