

Carol A. Kunze, Esq.
901 Cape Cod Ct
Napa, CA 94558
707.966.5211
707.371.1807 (fax)
ckunze@ix.netcom.com

November 19, 2000

Jesse M. Feder
Policy Planning Advisor
Office of Policy and International Affairs
U.S. Copyright Office
Copyright GC/I&R
Washington, D.C. 20024

Jeffrey E.M. Joyner
Senior Counsel
Office of Chief Counsel
National Telecommunications and Information Administration (NTIA), Room 4713
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Sent by electronic mail to:
104study@loc.gov; 104study@ntia.doc.gov

Re: Request to Testify at November 29, 2000 Hearing

Dear Messrs. Feder and Joyner:

This is a request for Carol A. Kunze, independent counsel, to testify on behalf of Red Hat, Inc., a public corporation with headquarters in Durham, North Carolina, at the November 29, 2000 hearing on, among other issues, Section 109 of the Copyright Act.

Summary of Testimony: The testimony will identify policy considerations relating to the application of Section 109 to digital products. It will focus on the importance of not jeopardizing the ability of open source and free software licensors to ensure that third party transferees receive the *entire* product whose distribution was authorized by the licensor, including the license rights granted with the software.

Red Hat distributes the Linux operating system, which is a type of software known as *open source* or *free software*. Both open source and free software licenses grant users the right to;

- 1) have the source code,
- 2) freely copy the software,
- 3) modify and make derivative works of the software, and
- 4) transfer or distribute the software in its original form or as a derivative work, *without paying copyright license fees*.

Many open source and free software licenses also embody the concept known as *copyleft*. Simply put, this is the requirement that all versions of the product, including derivative works, be distributed along with and subject to the restrictions and rights in the license under which the original work was received. This concept is central to the ability of a licensor to ensure that its product *remains* open source/free software.

Any amendment to Section 109 that purported to create a right to transfer copies of open source and free software *without* the accompanying license rights, would seriously jeopardize licensors' and users' joint interest in maintaining a product's status as open source/free software, and would deprive transferees of important copyright authorizations which the original copyright owner intended them to have.

This issue is of fundamental importance to the continued development and distribution of many open source and free software products. We believe it constitutes a policy consideration that should inform any recommendation to amend Section 109 with respect to its application to digital products.

Sincerely,

Carol A. Kunze

cc: jfed@loc.gov
mpoor@loc.gov
jjoyner@ntia.doc.gov