Neo4j, Inc. v. PureThink, LLC

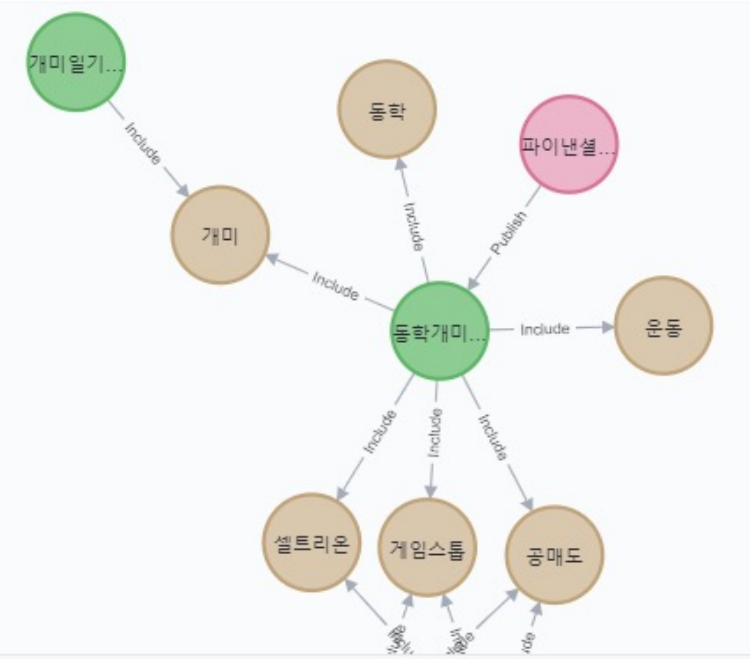
2024. 10. 08.
LG전자
박원재

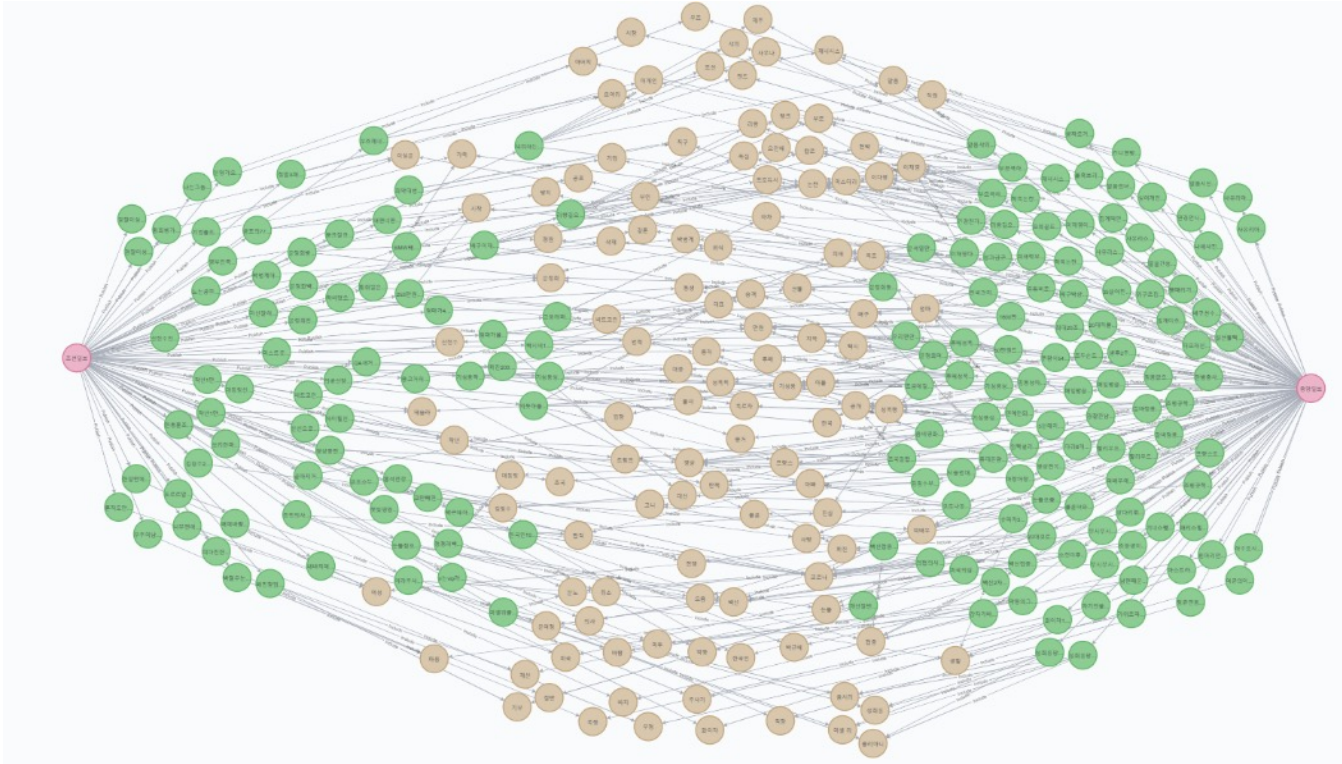
A Table of Contents.

Background

Neo4j

- Neo4j, Inc.에서 개발한 그래프 데이터베이스 관리 시스템
- Open Source Edition (AGPL-3.0)과
  Enterprise Edition(AGPL-3.0 w/~~Commons Clause~~)으로 Neo4j Sweden Software License
- 샌프란시스코에 본사, 스웨덴 말뫼에 유럽 지사가 있음





https://mons1220.tistory.com/249
https://ko.wikipedia.org/wiki/Neo4j

Purethink

- 버지니아에 위치한 Proprietary Relicensing 기업 (대리점?)
- John Mark Suhy가 설립
- Neo4j와 계약에 따른 파트너쉽을 갖고, Neo4j EE에 대한 Relicensing 사업을 하였음
- Neo4j와 계약 종료 후 Neo4j EE를 ONgDB로 배포(AGPL-3.0)

https://purethink.com/
https://law.justia.com/cases/federal/appellate-courts/ca9/21-16029/21-16029-2022-03-14.html

Progress of the Case

소송의 시작

- 2018년 11월 28일, 캘리포니아 지방법원에서
  Neo4j가 Purethink, John Mark Suhy 등을 고소
  1. Trademark Infringement
  2. False Designation of Origin
  3. False Advertising
  4. Federal and State Unfair Competition
  5. Breach of Contract
  6. Invasion of Privacy

- 2019년 1월 9일 피고가 맞고소
  1. Interference With Prospective Economic Advantage
  2. Interference with Contract
  3. Breach of Contract
  4. Declaratory Relief(Void Restrictions)
  5. Declaratory Relief(Restrictions Violate AGPL License)
  6. Declaratory Relief (Abandonment of Trademark)

https://law.justia.com/cases/federal/district-courts/california/candce/5:2018cv07182/335295/70/

법원 판결

- 2020년 5월 21일, 캘리포니아 지방법원의 Order for Motion
  - Neo4j 측의 요청만이 받아들여져

    Purethink 측의 상표 침해와 고객에 대한 Misrepresentation을 중단하도록 명령됨
- 2022년 3월 14일, 제9 순회 법원에서는 지방법원의 Order를 확정함
  1. Neo4j USA는 NEO4J를 상표로 등록하여 고소를 진행할 근거가 마련됨
  2. Purethink는 NEO4J의 상표를 경쟁제품(ONgDB) 홍보에 사용하여 공정이용에 해당되지 않음
     - Neo4j Enterprise / Government Package for Neo4j 등과 같은 표현
  3. ONgDB가 Neo4J EE의 Open Source 버전이라 홍보하는 것은 거짓임
     - Sweden Software License 제 7조에서 제거를 허여하는 "further restriction"은 upstream licensee가 추가한 것에만 해당
     - "drop in replacement" for Neo4j EE 라는 표현 역시 거짓
  4. 상표권 침해 관련 선례에서 사용된 8개 요소 중 2개 요소는 이번 사건에 해당되지 않지만,

     모든 요소가 해당되어야만 상표권 침해에 해당되는 것은 아님

https://law.justia.com/cases/federal/district-courts/california/candce/5:2018cv07182/335295/70/
https://law.justia.com/cases/federal/appellate-courts/ca9/21-16029/21-16029-2022-03-14.html

Issue of the Case

Naked Licensing

- Naked Licensing?
  - 상표에 대한 적절한 Quality Control 없이 Licensing 하는 것
  - Open Source로 License함에 따라 상표에 대한 권리가 상실되었다는 피고측 주장에 활용되었으나, 기각됨

> Neo4J offers both a community edition under GPL/AGPL, as well as a commercial edition, which had additional features only provided under commercial terms. The defendant argued that Neo4J's trademark was unenforceable because Neo4J used the mark on its open source software as well as its enterprise product. The defendant characterized licensing under GPL and AGPL as "naked licensing" (i.e. licensing of a trademark without exercise of sufficient quality control), which can lead to a loss of rights in the trademark.
> The court rejected the argument, saying,"Defendants do not raise any allegations indicating the Plaintiff has failed to exercise actual control over licensees' use of the trademark….[T]he fact the Plaintiff distributed Neo4J software on an open source basis pursuant to the GPL and AGPL is not, without more, sufficient to establish a naked license or demonstrate abandonment."– H. Meeker

https://heathermeeker.com/2020/05/25/neo4j-wins-a-victory-for-trademark-rights-in-open-source-products/

Sweden Software License 제 7조

- Sweden Software License = AGPL-3.0 + Common Clause License
- 즉, AGPL-3.0 제 7조를 의미
  - AGPL(GPL)-3.0의 제 7조에 따라 추가 조항이 포함될 수 있으나, 이는 "Additional Permission"에만 해당됨

AGPL-3.0
7. Additional Terms.
"Additional permissions" are terms that supplement the terms of this License by making exceptions from one or more of its conditions. Additional permissions that are applicable to the entire Program shall be treated as though they were included in this License, to the extent that they are valid under applicable law. If additional permissions apply only to part of the Program, that part may be used separately under those permissions, but the entire Program remains governed by this License without regard to the additional permissions.
…

http://collab.lge.com/main/display/FOSS/Commons+Clause+License

Sweden Software License 제 7조

- Non-permissive 추가 조항은 "further restriction"에 해당됨
- "You"(Licensee)는 "further restriction"을 제거할 권리가 있음

- 이 조항에 따라 "You"가 term을 추가할 경우 적절한 표기를 해야함

AGPL-3.0
7. Additional Terms.
...
All other non-permissive additional terms are considered "further restrictions" within the meaning of section 10. If the Program as you received it, or any part of it, contains a notice stating that it is governed by this License along with a term that is a further restriction, you may remove that term. If a license document contains a further restriction but permits relicensing or conveying under this License, you may add to a covered work material governed by the terms of that license document, provided that the further restriction does not survive such relicensing or conveying.

If you add terms to a covered work in accord with this section, you must place, in the relevant source files, a statement of the additional terms that apply to those files, or a notice indicating where to find the applicable terms.

http://collab.lge.com/main/display/FOSS/AGPL-3.0

Reaction of the Community

Heather Meeker

- 우리 법원 짜란다짜란다짜란다~

Neo4J Wins a Victory for Trademark Rights in Open Source Products

On May 21, 2020, the US District Court for the Northern District of California granted a motion for judgement on pleadings by Neo4J, a developer of graph database software, in *Neo4J, Inc. v. Purethink LLC*, 2020 WL 2614871.

Neo4J had brought a trademark infringement suit against Purethink, LLC, an erstwhile reseller of Neo4J's enterprise products, and its related entity iGov. After the reseller agreement between the parties terminated, Neo4J sued alleging trademark infringement, and the defendant counterclaimed that the trademark had been abandoned.

Neo4J offers both a community edition under GPL/AGPL, as well as a commercial edition, which had additional features only provided under commercial terms. The defendant argued that Neo4J's trademark was unenforceable because Neo4J used

https://heathermeeker.com/2020/05/25/neo4j-wins-a-victory-for-trademark-rights-in-open-source-products/

Software Freedom Conservancy

- 급발진

An Erroneous Preliminary Injunction Granted in Neo4j v. PureThink

by Bradley M. Kuhn on March 30, 2022

Bad Early Court Decision for AGPLv3 Has Not Yet Been Appealed

We at Software Freedom Conservancy proudly and vigilantly watch out for your rights under copyleft licenses such as the Affero GPLv3. Toward this goal, we have studied the **Neo4j, Inc. v. PureThink, LLC ongoing case in the Northern District of California** , and the preliminary injunction appeal decision in the Ninth Circuit Court this month. The case is complicated, and we've seen much understandable confusion in the public discourse about the status of the case and the impact of the Ninth Circuit's decision to continue the trial court's preliminary injunction while the case continues. While it's true that part of the summary judgment decision in the lower court bodes badly for an important provision in AGPLv3§7¶4, the good news is that the case is not over, nor was the appeal (decided this month) even an *actual appeal* of the decision itself! This lawsuit is far from completion.

A Brief Summary of the Case So Far

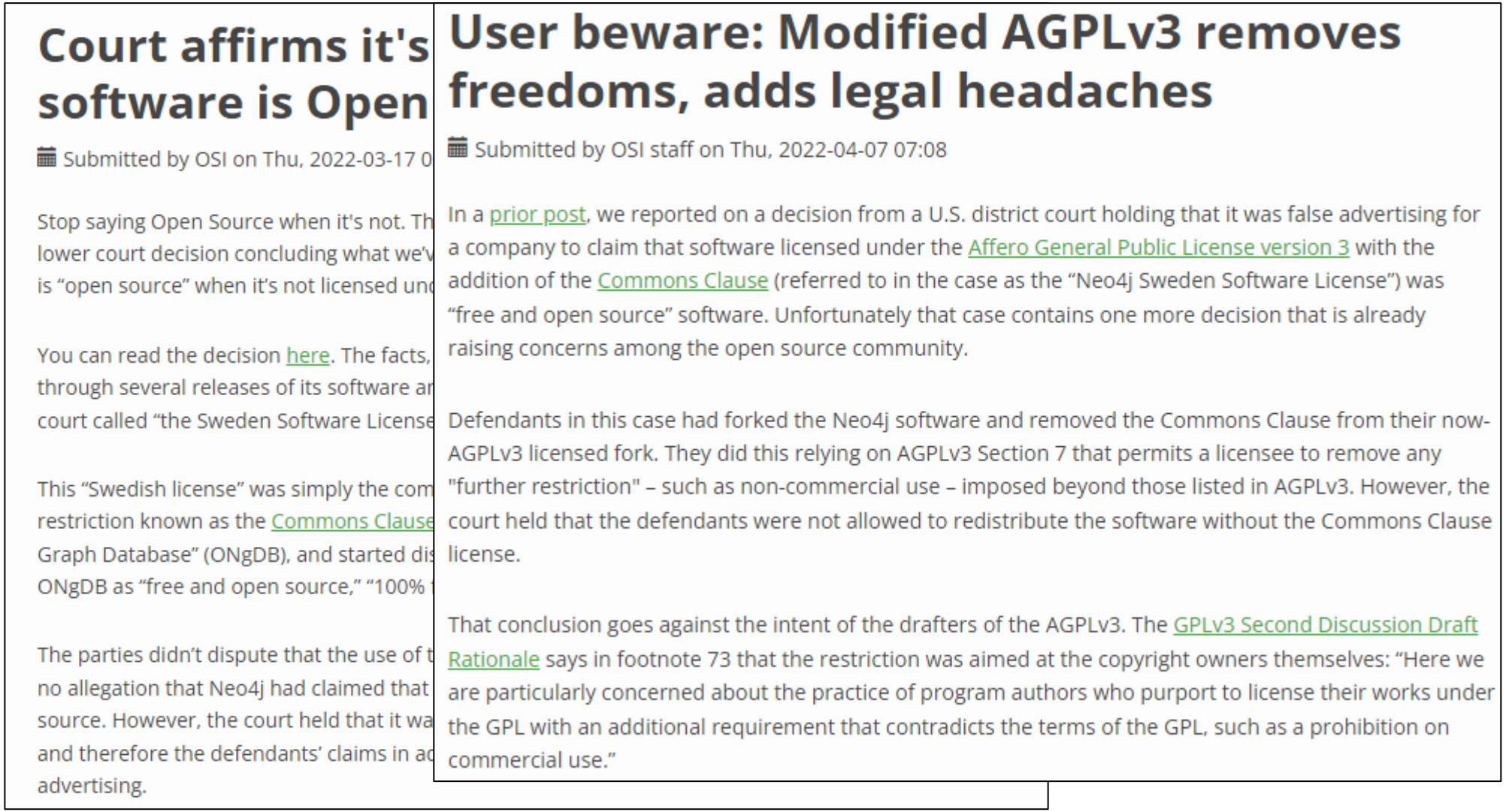
The primary case in question is a dispute between Neo4j, a **proprietary relicensing** company, against a very small company called PureThink, run by an individual named John Mark Suhy. Studying the docket of the case, and a **relevant related case**, and other available public materials, we've come to understand some basic facts and events. To paraphrase LeVar Burton, we encourage all our readers to not take our word (or anyone else's) for it, but instead take the time to read the dockets and come to your own conclusions.

After canceling their formal, contractual partnership with Suhy, Neo4j alleged multiple claims in court against

https://sfconservancy.org/blog/2022/mar/30/neo4j-v-purethink-open-source-affero-gpl/

Open Source Initiative

- 중립기어
- OSI가 짱이다



Court affirms it's software is Open

Submitted by OSI on Thu, 2022-03-17 0

Stop saying Open Source when it's not. Th
lower court decision concluding what we'
is "open source" when it's not licensed unc

You can read the decision here. The facts,
through several releases of its software ar
court called "the Sweden Software License

This "Swedish license" was simply the com
restriction known as the Commons Clause
Graph Database" (ONgDB), and started dis
ONgDB as "free and open source," "100%

The parties didn't dispute that the use of t
no allegation that Neo4j had claimed that
source. However, the court held that it wa
and therefore the defendants' claims in ac
advertising.

User beware: Modified AGPLv3 removes freedoms, adds legal headaches

Submitted by OSI staff on Thu, 2022-04-07 07:08

In a prior post, we reported on a decision from a U.S. district court holding that it was false advertising for a company to claim that software licensed under the Affero General Public License version 3 with the addition of the Commons Clause (referred to in the case as the "Neo4j Sweden Software License") was "free and open source" software. Unfortunately that case contains one more decision that is already raising concerns among the open source community.

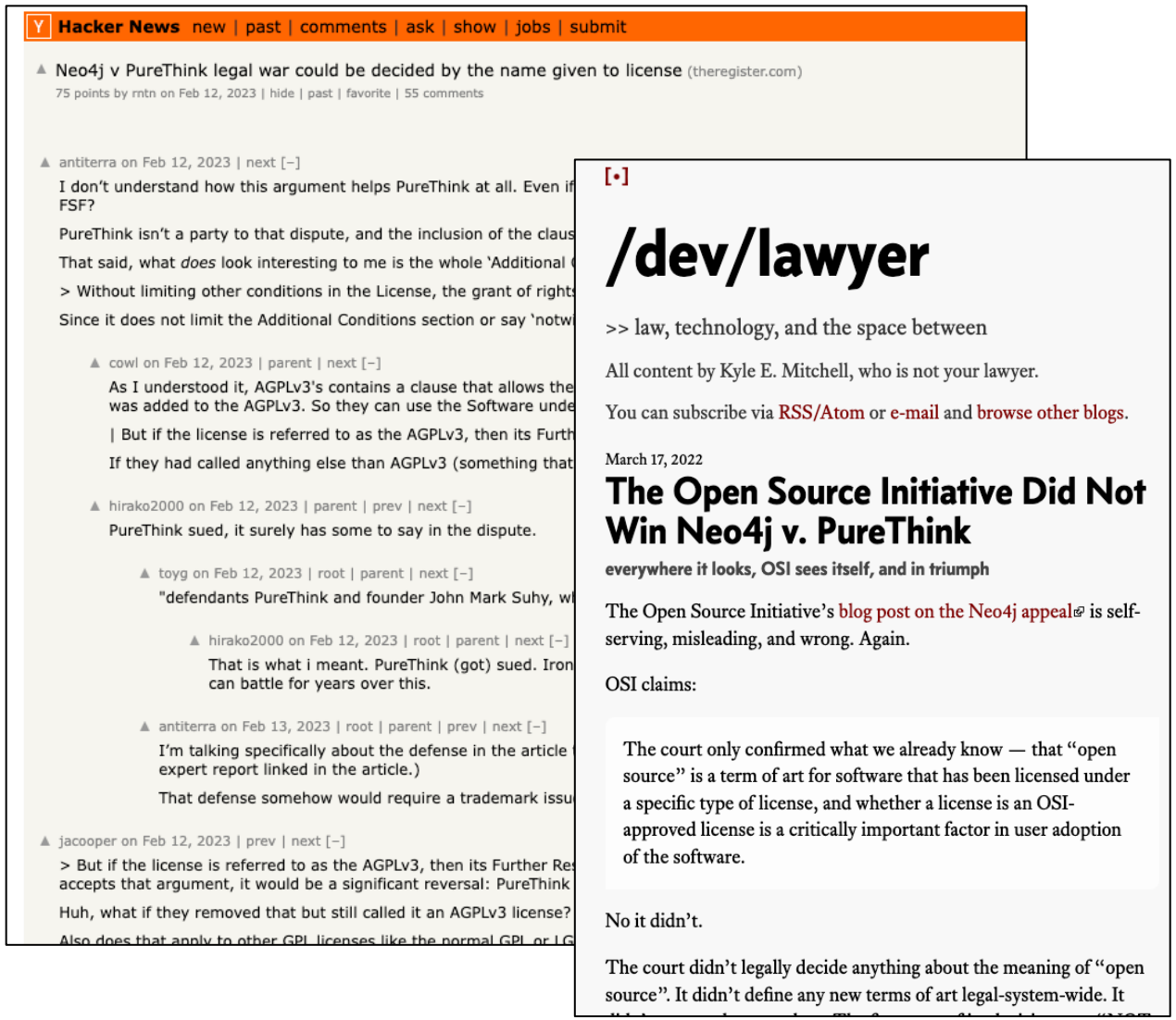
Defendants in this case had forked the Neo4j software and removed the Commons Clause from their now-AGPLv3 licensed fork. They did this relying on AGPLv3 Section 7 that permits a licensee to remove any "further restriction" – such as non-commercial use – imposed beyond those listed in AGPLv3. However, the court held that the defendants were not allowed to redistribute the software without the Commons Clause license.

That conclusion goes against the intent of the drafters of the AGPLv3. The GPLv3 Second Discussion Draft Rationale says in footnote 73 that the restriction was aimed at the copyright owners themselves: "Here we are particularly concerned about the practice of program authors who purport to license their works under the GPL with an additional requirement that contradicts the terms of the GPL, such as a prohibition on commercial use."

https://opensource.org/blog/court-affirms-its-false-advertising-to-claim-software-is-open-source-when-its-not
https://opensource.org/blog/modified-agplv3-removes-freedoms-adds-legal-headaches

Mailing List

- 궁시렁궁시렁...



Hacker News new | past | comments | ask | show | jobs | submit

▲ Neo4j v PureThink legal war could be decided by the name given to license (theregister.com)
75 points by rntn on Feb 12, 2023 | hide | past | favorite | 55 comments

▲ antiterra on Feb 12, 2023 | next [–]
I don't understand how this argument helps PureThink at all. Even if
FSF?
PureThink isn't a party to that dispute, and the inclusion of the claus
That said, what *does* look interesting to me is the whole 'Additional
> Without limiting other conditions in the License, the grant of right
Since it does not limit the Additional Conditions section or say 'notw

▲ cowl on Feb 12, 2023 | parent | next [–]
As I understood it, AGPLv3's contains a clause that allows the
was added to the AGPLv3. So they can use the Software unde
| But if the license is referred to as the AGPLv3, then its Furth
If they had called anything else than AGPLv3 (something that

▲ hirako2000 on Feb 12, 2023 | parent | prev | next [–]
PureThink sued, it surely has some to say in the dispute.

▲ toyg on Feb 12, 2023 | root | parent | next [–]
"defendants PureThink and founder John Mark Suhy, w

▲ hirako2000 on Feb 12, 2023 | root | parent | next [–]
That is what i meant. PureThink (got) sued. Iron
can battle for years over this.

▲ antiterra on Feb 13, 2023 | root | parent | prev | next [–]
I'm talking specifically about the defense in the article
expert report linked in the article.)
That defense somehow would require a trademark issu

▲ jacooper on Feb 12, 2023 | prev | next [–]
> But if the license is referred to as the AGPLv3, then its Further Re
accepts that argument, it would be a significant reversal: PureThink
Huh, what if they removed that but still called it an AGPLv3 license?
Also does that apply to other GPL licenses like the normal GPL or LG

[•]

/dev/lawyer

>> law, technology, and the space between

All content by Kyle E. Mitchell, who is not your lawyer.

You can subscribe via RSS/Atom or e-mail and browse other blogs.

March 17, 2022

The Open Source Initiative Did Not Win Neo4j v. PureThink

everywhere it looks, OSI sees itself, and in triumph

The Open Source Initiative's blog post on the Neo4j appeal is self-serving, misleading, and wrong. Again.

OSI claims:

> The court only confirmed what we already know — that "open source" is a term of art for software that has been licensed under a specific type of license, and whether a license is an OSI-approved license is a critically important factor in user adoption of the software.

No it didn't.

The court didn't legally decide anything about the meaning of "open source". It didn't define any new terms of art legal-system-wide. It

https://news.ycombinator.com/item?id=34763955
https://writing.kemitchell.com/2022/03/17/OSI-Neo4j-PureThink


Q&A

감사합니다