

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SOFTWARE FREEDOM CONSERVANCY, INC. and ERIK ANDERSEN, <div style="text-align: center;">Plaintiffs,</div> <div style="text-align: center;">-against-</div> PHOEBE MICRO, INC., <div style="text-align: center;">Defendant.</div>	X : : : : : : : X	ECF CASE 09-CV-10155 (SAS) DECLARATION OF ERIK ANDERSEN
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I, Erik Andersen, pursuant to 28 U.S.C. 1746, declare as follows:

1. I am a named plaintiff in this action and reside in Springville, Utah. I offer this declaration in support of plaintiffs' motion for a summary judgment against defendant Phoebe Micro, Inc. ("Phoebe Micro").

2. I am a computer programmer and have for many years written and distributed computer software in a professional capacity.

3. Beginning in about November 1999, I wrote software and documentation for inclusion in a open source computer program known as BusyBox. I allowed my contributions to be included in the BusyBox project, but retained all legal ownership of my copyrights therein. Over the years, the BusyBox project came to include many of my contributions.

4. Beginning in about January 2002, I became maintainer of the BusyBox computer program. In that capacity, I supervised, coordinated and managed the release of multiple updates to BusyBox, including every version from 0.60.3 through version 1.1.0. In addition to the textual modifications I personally made to BusyBox's source code, as maintainer I edited and arranged

code and documentation contributed by other software developers for inclusion into BusyBox's source code – accepting some contributions, and rejecting other contributions. Each version of BusyBox released during my tenure comprised a portion of the previous release, together with my own additions and edits to the code, and my arrangement of others' contributions, which I often edited before adding them. I retained all legal ownership of my copyrights associated with my work as maintainer, including my textual modifications, edits, compilations of multiple works, and computer programs therein.

5. As a maintainer and a developer of the BusyBox program, I used a version control software program to manage all modifications made to the BusyBox source code and to store “commit logs” containing all relevant metadata associated with each “commit” (i.e., new and/or modified code submitted for inclusion). Each commit log is viewable in a format that shows the differences between an affected file before and after the associated commit. I used a particular format known as a “patch format,” generated using a utility called “diff.” Commit logs in patch format contain: (a) a short explanation of where the change occurred; (b) the lines that were added by the commit, if any (preceded with a “+”); and (c) the lines that were removed by the commit, if any (preceded by a “-”). I could then generate and/or distribute a “patch,” i.e., a single unit of work that represents a series of changes to the code base in patch format. A user could then apply that patch to her version of BusyBox and incorporate all of the new changes from the patch into her version of BusyBox.

6. Each commit log also includes an “author” field, which the version control software program would automatically populate with the name of the developer formally adding

(or “committing”) the modification to the BusyBox code base. As maintainer, I was responsible for committing many modifications to BusyBox on behalf of other developers who didn't have full access privileges to the version control software program. In those instances, I would manually enter the developers' name(s) in a human-readable field of the associated commit logs as recognition of their contributions. In contrast, I did not enter my own name into a human-readable field in commit logs relating to code I personally authored, since my user name was already in the author field. It would simply have been too burdensome to manually write my name each time I made a contribution, especially since the system would automatically identify me as the committer of the change and, thus, the author.

7. I made all commit logs produced during my tenure as maintainer available for public viewing and inspection at <http://www.busybox.net>. All of the commit logs associated with the multiple releases of BusyBox produced during my tenure as maintainer are reviewed by me and other members of the BusyBox community, and are still accessible at <http://www.busybox.net> as of today.

8. BusyBox is currently maintained using the version control software program Git. Using basic commands in Git, one can parse the commit logs created during my tenure as maintainer and developer of BusyBox to identify which patches I personally wrote, as well as which additional patches from third party contributors I examined, edited and adapted for inclusion into BusyBox. To identify the lines of code I added, wrote, and/or edited from September 7, 2001 to the date of the release of BusyBox v.0.60.3, one can use the commands `git blame` and `git log` to generate reports using those date parameters. For all subsequent

versions of BusyBox released under my tenure, one can use the same commands to parse the commit logs associated with those releases.

9. On April 7, 2007, I designated Software Freedom Conservancy (“Conservancy”) to act as an enforcement agent on behalf of my copyrights in BusyBox. I have authorized Conservancy to act on my behalf to encourage and compel users of BusyBox to comply with the terms of the license under which my copyrighted works had been distributed. Annexed hereto as Exhibit 1 is a true copy of an email I sent to Bradley M. Kuhn on April 7, 2007 designating Conservancy to be my enforcement agent on behalf of my copyrighted works.

10. On April 27, 2002, I supervised, coordinated and managed the release of BusyBox version 0.60.3. I began preparing for this release on September 7, 2001. From that date until the release date of version 0.60.3, I committed at least 189 patches, adding or changing at least 10,473 lines of code. For 142 of those patches (corresponding to 6,039 lines of code), I did not include any additional attribution to other developers – which reflects my standard practice for code that I personally authored. The remaining 47 patches (corresponding to 4,216 lines of code) are from patches contributed by other developers that I included in the software program, often times after editing them as I felt appropriate. For these patches, I manually updated the associated commit log to include the name of the contributing developer. As maintainer, I created the final arrangement of all commits.

11. I registered my copyright in the new and revised computer source code written by me that was included in BusyBox version 0.60.3. Annexed hereto as Exhibit 2 is a true copy of “BusyBox, v.0.60.3.”, Copyright Reg. No. TX0006869051 (10/2/2008).

12. On July 15, 2003, I supervised, coordinated and managed the release of BusyBox version 1.00-pre1. For this release, I accepted 92 patches from outside contributors, which added or changed 19,514 lines of code and/or documentation. I also applied 166 patches of my own, which accounted for 3,833 lines of code and/or documentation added or changed. As maintainer, I created the final arrangement of all commits.

13. On July 30, 2003, I supervised, coordinated and managed the release of BusyBox version 1.00-pre2. For this release, I accepted 18 patches from outside contributors, which added or changed 9,393 lines of code and/or documentation. I also applied 33 patches of my own, which accounted for 386 lines of code and/or documentation added or changed. As maintainer, I created the final arrangement of all commits.

14. On September 12, 2003, I supervised, coordinated and managed the release of BusyBox version 1.00-pre3. For this release, I accepted 17 patches from outside contributors, which added or changed 4,447 lines of code and/or documentation. I also applied 18 patches of my own, which accounted for 277 lines of code and/or documentation added or changed. As maintainer, I created the final arrangement of all commits.

15. On December 10, 2003, I supervised, coordinated and managed the release of BusyBox version 1.00-pre4. For this release, I accepted 21 patches from outside contributors, which added or changed 866 lines of code and/or documentation. I also applied 37 patches of my own, which accounted for 715 lines of code and/or documentation added or changed. As maintainer, I created the final arrangement of all commits.

16. On December 23, 2003, and January 31, 2004, I supervised, coordinated and

managed the release of BusyBox version 1.00-pre5 and 1.00-pre6, respectively. For these releases, I accepted 21 patches from outside contributors, which added or changed 1,011 lines of code and/or documentation. I also applied 35 patches of my own, which accounted for 718 lines of code and/or documentation added or changed. As maintainer, I created the final arrangement of all commits for both releases.

17. On February 4, 2004, and February 23, 2004, I supervised, coordinated and managed the release of BusyBox version 1.00-pre7 and 1.00-pre8, respectively. For these releases, I accepted 9 patches from outside contributors, which added or changed 128 lines of code and/or documentation. I also applied 17 patches of my own, which accounted for 187 lines of code and/or documentation added or changed. As maintainer, I created the final arrangement of all commits for both releases.

18. On April 7, 2004, I supervised, coordinated and managed the release of BusyBox version 1.00-pre9. For this release, I accepted 18 patches from outside contributors, which added or changed 656 lines of code and/or documentation. I also applied 48 patches of my own, which accounted for 1,627 lines of code and/or documentation added or changed. As maintainer, I created the final arrangement of all commits.

19. On April 13, 2004, and July 20, 2004, I supervised, coordinated and managed the release of BusyBox version 1.00-pre10 and version 1.00-rc1, respectively. For these releases, I accepted 26 patches from outside contributors, which added or changed 1,886 lines of code and/or documentation. I also applied 43 patches of my own, which accounted for 413 lines of code and/or documentation added or changed. As maintainer, I created the final arrangement of

all commits for both releases.

20. On July 26, 2004, August 16, 2004, and October 13, 2004, supervised, coordinated and managed the release of BusyBox version 1.00-rc2, 1.00-rc3, and 1.00. For these releases, I accepted 37 patches from outside contributors, which added or changed 2,299 lines of code and/or documentation. I also applied 42 patches of my own, which accounted for 714 lines of code and/or documentation added or changed. As maintainer, I created the final arrangement of all commits for all three releases.

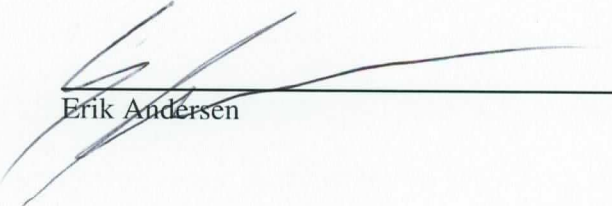
21. On August 23, 2011, I authorized Conservancy to act as my agent with regard to the registration of my copyrights in BusyBox and the maintenance of any existing and/or future copyrights in BusyBox.

22. I asked Conservancy to register my contributions relating to text, compilation of multiple works, and editing for the releases discussed above; and specifically to versions 1.00-pre1, 1.00-pre2, 1.00-pre3, 1.00-pre4, 1.00-pre6, 1.00-pre8, 1.00-pre9, 1.00-rc1 and 1.00 of the computer program. Annexed hereto as Exhibit 3 are true copies of “BusyBox, version 1.00-pre1,” Copyright Reg. No. TX007441841 (8/30/2011); “BusyBox, version 1.00-pre2,” Copyright Reg. No. TX007450229 (8/30/2011); “BusyBox, version 1.00-pre3,” Copyright Reg. No. TX007450225 (8/31/2011); “BusyBox, version 1.00-pre4,” Copyright Reg. No. TX007450179 (8/31/2011); “BusyBox, version 1.00-pre6,” Copyright Reg. No. TX007443243 (9/1/2011); “BusyBox, version 1.00-pre8,” Copyright Reg. No. TX007445924 (9/6/2011); “BusyBox, version 1.00-pre9,” Copyright Reg. No. TX007445912 (9/6/2011); “BusyBox, version 1.00-rc1,” Copyright Reg. No. TX007445909 (9/6/2011); and, “BusyBox, version 1.00” Copyright Reg. No.

TX007412131 (9/6/11).

23. I allow my contributions to the BusyBox project to be copied, modified and redistributed by others under certain terms. Specifically, I license the copyright in my contributions to BusyBox under the terms of a well known open source software license called the "GNU General Public License, Version 2" ("GPLv2"). Annexed hereto as Exhibit 4 is a true copy of GPLv2. I do not allow my contributions to be copied, modified or distributed under any other terms.

I declare under penalty of perjury that the forgoing is true and correct.



Erik Andersen

Executed on August 15, 2012