



# Nothing to GLOSS Over: California Court Agrees to Hear Case on Open Source License Enforcement

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Using, developing, and distributing open source software (OSS) can help stimulate innovation, harness collective expertise, and promote interoperable programs and standards. OSS can also be problematic if incorporated into commercial software, as demonstrated by a recent case before the California Northern District Court (Court). [Artifex Software v. Hancom](#) involves the alleged breach by Hancom Inc. (Hancom) of a widely-adopted OSS license, the [GNU General Public License](#) (GPL). A recent ruling on Hancom's motion to dismiss the suit adds to the limited jurisprudence on OSS license enforcement.

## Background

Artifex Software Inc. (Artifex) is a California company with roots in the open source software community. It offers a popular PDF viewer called Ghostscript, which is made available under two distinct licensing schemes. Users may either license the Ghostscript software commercially, for a fee, or use the Ghostscript software at no cost but subject to the terms of the GPL.

South Korean software company Hancom licensed Ghostscript pursuant to the GPL and integrated Ghostscript into its suite of commercial office and word processing software. Since Hancom incorporated Ghostscript into its software without revealing to the end-user of its software that Ghostscript was part of its software, under the terms of the GPL, Hancom would be required to distribute its software with the accompanying source code.

## Claims by Artifex

Artifex filed suit in December 2016 claiming breach of contract and copyright infringement. In addition to compensatory and other damages, Artifex seeks a permanent injunction prohibiting Hancom from further using Ghostscript and requiring Hancom to publicly distribute the source code underlying its software in compliance with the GPL. Hancom filed a motion to dismiss the suit, asserting that: (i) Artifex's claim for breach of contract was preempted by federal copyright law, (ii) Artifex failed to allege that the copying, integrating and incorporating of Artifex's software was committed in the United States, and (iii) Artifex is not entitled to specific performance, restitution, and various damage awards.

Although Artifex agreed to withdraw its request for exemplary damages, all other grounds for dismissal were ultimately denied by the Court. While the Court described Artifex's request for specific performance as "extremely dubious," it nonetheless allowed the company to seek compliance with the GPL's requirement for Hancom to distribute the source code of its software incorporating the Ghostscript source code. The Court further held that the unsigned GPL license could constitute an enforceable contract, and

found that Artifex's claims could, in principle, be maintained under state law. An initial case management conference will be held later this month to assess whether the case should proceed to a trial on the merits.

## Implications

While far from determinative, the recent ruling in *Artifex v. Hancorn* is a step towards greater certainty surrounding the enforcement of open source software licenses. Given that open source software underpins a wide range of commercial software, the eventual outcome of *Artifex v. Hancorn* and other developments in this space should be of particular interest to any company that makes its software commercially available. In addition, investors in, and purchasers of, software companies should be alert to the existence of OSS in the software of target companies and remain vigilant with respect to software due diligence in the context of corporate finance and M&A transactions.

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