

Company Escalates Fight With I.B.M. By Revoking License to Key Software

By Steve Lohr

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In an escalating legal battle, the SCO Group announced yesterday that it was revoking I.B.M.'s license for software essential to a multibillion-dollar business and that it had asked a federal court to block that business permanently.

The SCO action focused on the license for AIX, the I.B.M. version of the Unix operating system. But the legal dispute is stirring wider concerns in the computer industry because it has the potential to affect the many corporations now using the GNU Linux operating system, a close relative of Unix.

Linux is distributed free, improved and debugged by a far-flung network of computer programmers, guided by Linus Torvalds, who wrote the software engine, or kernel, of the operating system. I.B.M. is a leading big-company supporter of Linux.

SCO sued I.B.M. in March, contending that the company had copied Unix code into Linux, violating SCO's contract rights. SCO, based in Lindon, Utah, bought the license rights and source code to Unix from Novell in 1995. But legal experts say the extent of SCO's contract rights are murky.

The SCO suit gave I.B.M. 100 days to settle the dispute, a deadline that expired Friday at midnight. Unless I.B.M. settled, SCO said in recent weeks, it would revoke I.B.M.'s Unix license.

SCO maintains that its Unix license restrictions also restrain the behavior of the other commercial versions of Unix -- "derivative works" -- like AIX.

"I.B.M. has clearly demonstrated its misuse of Unix source code and has violated the terms of its contract with SCO," said Mark J. Heise, a partner at Boies, Schiller & Flexner, the law firm representing SCO.

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SCO is also asking a federal court in Salt Lake City to issue a permanent injunction that prohibits I.B.M. from using or distributing products with its AIX operating system. Last year, I.B.M. sold about \$3.6 billion worth of computers running its AIX operating system.

"I.B.M. no longer has the authority to sell or distribute AIX, and customers no longer have the right to use AIX software," Darl C. McBride, the chief executive of SCO, said.

For its part, I.B.M. issued a statement rejecting SCO's legal claims. I.B.M. portrayed SCO's campaign as an effort to extract a big payday from I.B.M. by raising legal concerns about Linux and other free software that uses so-called open-source development.

"Since filing its lawsuit against I.B.M.," the statement said, "SCO has made public statements and accusations about I.B.M.'s Unix license and about Linux in an apparent attempt to create fear, uncertainty and doubt among I.B.M.'s customers and the open-source community."

The I.B.M. statement added that its Unix license "cannot be terminated," and that "I.B.M. will defend itself vigorously."

The statement ended with words of assurance for customers. "I.B.M. will continue to ship, support and develop AIX which represents years of I.B.M. innovation, hundreds of millions of dollars of investment and many patents," it said. "As always, I.B.M. will stand behind our products and our customers."

To date, industry analysts said, most of I.B.M.'s customers seem willing to accept the company's assurances at face value. "Most I.B.M. customers are taking the view that I.B.M. will take care of this problem, however it turns out," said Amy Wohl, president of Amy Wohl Associates, a research firm in Narbeth, Pa.

A. M. Sacconaghi, an analyst at Sanford C. Bernstein & Company, said, "It may cause concern for some of its Linux and AIX customers, but the sense is that this is a nuisance factor for I.B.M."

Clearly, SCO made itself even more of a nuisance yesterday. "They have to keep the pressure on," said Jeffrey D. Neuburger, a technology lawyer at the firm of Brown Raysman Millstein Felder & Steiner.

With I.B.M. refusing to settle, the chances are higher that the SCO-I.B.M. dispute will come to trial. No court date has yet been set.