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SCO to attack validity of Linux licence

SCO's strategy for its lawsuit against IBM could destroy the legal foundation of Linux and related software



By [Matthew Broersma](#) | August 15, 2003 -- 13:50 GMT (06:50 PDT) | Topic: [Government : UK](#)

SCO Group is planning to argue in its court battle against IBM that the General Public License (GPL) covering Linux and other open-source software is invalid, according to a report.

SCO, owner of several key copyrights related to the Unix operating system, has been aggressively defending its intellectual property holdings connected to Unix System V, and filed a \$3bn (£1.87bn) lawsuit against IBM earlier this year. The suit claims that IBM has committed trade-secret theft and breach of contract for allegedly copying proprietary Unix source code into its Linux-based products.

IBM's defence will partly rest on the argument that SCO distributed its own version of Linux for many years, containing the allegedly infringing code, and that by this action effectively placed the code in question under the GPL.

SCO is planning to respond that the GPL itself is invalid, SCO's lead attorney, Mark Heise of Boies Schiller & Flexner, told the *Wall Street Journal* in a report on Thursday.

If SCO is successful, its lawsuit would undermine the legal basis for Linux and much other open-source software, although the open-source community has prepared an alternative licence that could be used by Linux if the GPL is invalidated.

SCO will argue that the GPL's provisions allowing unlimited copying and modification are not compatible with US copyright law, which allows software buyers to make only a single copy, says the Journal. Heise said the GPL "is pre-empted by copyright law", according to the report.

Broadly speaking, the GPL allows anyone to modify and redistribute a piece of software covered by the licence, as long as the modified code is returned to the developer community. The licence also requires that software which incorporates GPL-covered code must itself be placed under the GPL, a provision that led a Microsoft executive to [compare the GPL to an "un-American cancer"](http://news.zdnet.co.uk/software/0,39020381,2092085,00.htm) (<http://news.zdnet.co.uk/software/0,39020381,2092085,00.htm>).



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Heise's remarks echo the comments of SCO chief executive Darl McBride during a recent teleconference, in which he announced a set of licence fees that companies using Linux could pay if they wanted to avoid legal action by SCO.

McBride was unusually blunt in attacking open-source software, saying the GPL is fundamentally flawed from a business and legal perspective. "At issue here is more than just SCO and Red Hat," McBride said. "What is at issue here is whether intellectual property rights will have any value in the age of the Internet."

Red Hat, one of the largest distributors of Linux and related applications, filed a suit against SCO earlier this month in the US District Court in Delaware. The suit in part seeks a court ruling affirming that the company has not violated SCO's trade secrets or intellectual property rights. It claims that SCO's actions are intended to hurt Red Hat and other Linux backers by creating "an atmosphere of fear, uncertainty and doubt about Linux", according to the suit.

CNET News.com's Matt Hines contributed to this report.

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